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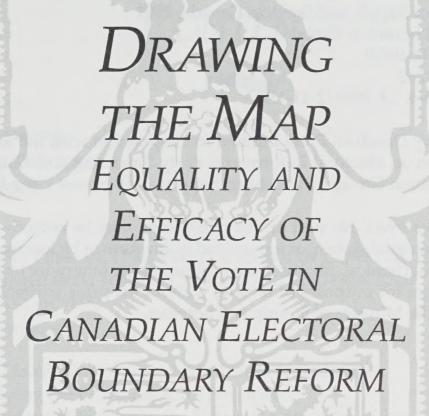




## DRAWING THE MAP



This is Volume 11 in a series of studies commissioned as part of the research program of the Royal Commission on Electoral Reform and Party Financing





# David Small Editor

**Volume 11 of the Research Studies** 

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### FOREWORD



THE ROYAL COMMISSION on Electoral Reform and Party Financing was established in November 1989. Our mandate was to inquire into and report on the appropriate principles and process that should govern the election of members of the House of Commons and the financing of political parties and candidates' campaigns. To conduct such a comprehensive examination of Canada's electoral system, we held extensive public consultations and developed a research program designed to ensure that our recommendations would be guided by an independent foundation of empirical inquiry and analysis.

The Commission's in-depth review of the electoral system was the first of its kind in Canada's history of electoral democracy. It was dictated largely by the major constitutional, social and technological changes of the past several decades, which have transformed Canadian society, and their concomitant influence on Canadians' expectations of the political process itself. In particular, the adoption in 1982 of the *Canadian Charter of Rights and Freedoms* has heightened Canadians' awareness of their democratic and political rights and of the way they are served by the electoral system.

The importance of electoral reform cannot be overemphasized. As the Commission's work proceeded, Canadians became increasingly preoccupied with constitutional issues that have the potential to change the nature of Confederation. No matter what their beliefs or political allegiances in this continuing debate, Canadians agree that constitutional change must be achieved in the context of fair and democratic processes. We cannot complacently assume that our current electoral process will always meet this standard or that it leaves no room for improvement. Parliament and the national government must be seen as legitimate; electoral reform can both enhance the stature of national

political institutions and reinforce their ability to define the future of our country in ways that command Canadians' respect and confidence and promote the national interest.

In carrying out our mandate, we remained mindful of the importance of protecting our democratic heritage, while at the same time balancing it against the emerging values that are injecting a new dynamic into the electoral system. If our system is to reflect the realities of Canadian political life, then reform requires more than mere tinkering with electoral laws and practices.

Our broad mandate challenged us to explore a full range of options. We commissioned more than 100 research studies, to be published in a 23-volume collection. In the belief that our electoral laws must measure up to the very best contemporary practice, we examined electionrelated laws and processes in all of our provinces and territories and studied comparable legislation and processes in established democracies around the world. This unprecedented array of empirical study and expert opinion made a vital contribution to our deliberations. We made every effort to ensure that the research was both intellectually rigorous and of practical value. All studies were subjected to peer review, and many of the authors discussed their preliminary findings with members of the political and academic communities at national symposiums on major aspects of the electoral system.

The Commission placed the research program under the able and inspired direction of Dr. Peter Aucoin, Professor of Political Science and Public Administration at Dalhousie University. We are confident that the efforts of Dr. Aucoin, together with those of the research coordinators and scholars whose work appears in this and other volumes, will continue to be of value to historians, political scientists, parliamentarians and policy makers, as well as to thoughtful Canadians and the international community.

Along with the other Commissioners, I extend my sincere gratitude to the entire Commission staff for their dedication and commitment. I also wish to thank the many people who participated in our symposiums for their valuable contributions, as well as the members of the research and practitioners' advisory groups whose counsel significantly aided our undertaking.

Chairman

### Introduction



THE ROYAL COMMISSION'S research program constituted a comprehensive and detailed examination of the Canadian electoral process. The scope of the research, undertaken to assist Commissioners in their deliberations, was dictated by the broad mandate given to the Commission.

The objective of the research program was to provide Commissioners with a full account of the factors that have shaped our electoral democracy. This dictated, first and foremost, a focus on federal electoral law, but our inquiries also extended to the Canadian constitution, including the institutions of parliamentary government, the practices of political parties, the mass media and nonpartisan political organizations, as well as the decision-making role of the courts with respect to the constitutional rights of citizens. Throughout, our research sought to introduce a historical perspective in order to place the contemporary experience within the Canadian political tradition.

We recognized that neither our consideration of the factors shaping Canadian electoral democracy nor our assessment of reform proposals would be as complete as necessary if we failed to examine the experiences of Canadian provinces and territories and of other democracies. Our research program thus emphasized comparative dimensions in relation to the major subjects of inquiry.

Our research program involved, in addition to the work of the Commission's research coordinators, analysts and support staff, over 200 specialists from 28 universities in Canada, from the private sector and, in a number of cases, from abroad. Specialists in political science constituted the majority of our researchers, but specialists in law, economics, management, computer sciences, ethics, sociology and communications, among other disciplines, were also involved.

### X i V INTRODUCTION

In addition to the preparation of research studies for the Commission, our research program included a series of research seminars, symposiums and workshops. These meetings brought together the Commissioners, researchers, representatives from the political parties, media personnel and others with practical experience in political parties, electoral politics and public affairs. These meetings provided not only a forum for discussion of the various subjects of the Commission's mandate, but also an opportunity for our research to be assessed by those with an intimate knowledge of the world of political practice.

These public reviews of our research were complemented by internal and external assessments of each research report by persons qualified in the area; such assessments were completed prior to our decision to publish any study in the series of research volumes.

The Research Branch of the Commission was divided into several areas, with the individual research projects in each area assigned to the research coordinators as follows:

F. Leslie Seidle Political Party and Election Finance

Herman Bakvis Political Parties

Kathy Megyery Women, Ethno-cultural Groups

and Youth

David Small Redistribution; Electoral Boundaries;

Voter Registration

Janet Hiebert Party Ethics

Michael Cassidy Democratic Rights; Election

Administration

Robert A. Milen Aboriginal Electoral Participation

and Representation

Frederick J. Fletcher Mass Media and Broadcasting in

Elections

David Mac Donald

(Assistant Research

Coordinator)

**Direct Democracy** 

These coordinators identified appropriate specialists to undertake research, managed the projects and prepared them for publication. They also organized the seminars, symposiums and workshops in their research areas and were responsible for preparing presentations and briefings to help the Commission in its deliberations and decision making. Finally, they participated in drafting the Final Report of the Commission.

On behalf of the Commission, I welcome the opportunity to thank the following for their generous assistance in producing these research studies – a project that required the talents of many individuals.

In performing their duties, the research coordinators made a notable contribution to the work of the Commission. Despite the pressures of tight deadlines, they worked with unfailing good humour and the utmost congeniality. I thank all of them for their consistent support and cooperation.

In particular, I wish to express my gratitude to Leslie Seidle, senior research coordinator, who supervised our research analysts and support staff in Ottawa. His diligence, commitment and professionalism not only set high standards, but also proved contagious. I am grateful to Kathy Megyery, who performed a similar function in Montreal with equal aplomb and skill. Her enthusiasm and dedication inspired us all.

On behalf of the research coordinators and myself, I wish to thank our research analysts: Daniel Arsenault, Eric Bertram, Cécile Boucher, Peter Constantinou, Yves Denoncourt, David Docherty, Luc Dumont, Jane Dunlop, Scott Evans, Véronique Garneau, Keith Heintzman, Paul Holmes, Hugh Mellon, Cheryl D. Mitchell, Donald Padget, Alain Pelletier, Dominique Tremblay and Lisa Young. The Research Branch was strengthened by their ability to carry out research in a wide variety of areas, their intellectual curiosity and their team spirit.

The work of the research coordinators and analysts was greatly facilitated by the professional skills and invaluable cooperation of Research Branch staff members: Paulette LeBlanc, who, as administrative assistant, managed the flow of research projects; Hélène Leroux, secretary to the research coordinators, who produced briefing material for the Commissioners and who, with Lori Nazar, assumed responsibility for monitoring the progress of research projects in the latter stages of our work; Kathleen McBride and her assistant Natalie Brose, who created and maintained the database of briefs and hearings transcripts; and Richard Herold and his assistant Susan Dancause, who were responsible for our research library. Jacinthe Séguin and Cathy Tucker also deserve thanks – in addition to their duties as receptionists, they assisted in a variety of ways to help us meet deadlines.

We were extremely fortunate to obtain the research services of firstclass specialists from the academic and private sectors. Their contributions are found in this and the other 22 published research volumes. We thank them for the quality of their work and for their willingness to contribute and to meet our tight deadlines.

Our research program also benefited from the counsel of Jean-Marc Hamel, Special Adviser to the Chairman of the Commission and former

### x v i INTRODUCTION

Chief Electoral Officer of Canada, whose knowledge and experience proved invaluable.

In addition, numerous specialists assessed our research studies. Their assessments not only improved the quality of our published studies, but also provided us with much-needed advice on many issues. In particular, we wish to single out professors Donald Blake, Janine Brodie, Alan Cairns, Kenneth Carty, John Courtney, Peter Desbarats, Jane Jenson, Richard Johnston, Vincent Lemieux, Terry Morley and Joseph Wearing, as well as Ms. Beth Symes.

Producing such a large number of studies in less than a year requires a mastery of the skills and logistics of publishing. We were fortunate to be able to count on the Commission's Director of Communications, Richard Rochefort, and Assistant Director, Hélène Papineau. They were ably supported by the Communications staff: Patricia Burden, Louise Dagenais, Caroline Field, Claudine Labelle, France Langlois, Lorraine Maheux, Ruth McVeigh, Chantal Morissette, Sylvie Patry, Jacques Poitras and Claudette Rouleau-O'Toole.

To bring the project to fruition, the Commission also called on specialized contractors. We are deeply grateful for the services of Ann McCoomb (references and fact checking); Marthe Lemery, Pierre Chagnon and the staff of Communications Com'ça (French quality control); Norman Bloom, Pamela Riseborough and associates of B&B Editorial Consulting (English adaptation and quality control); and Mado Reid (French production). Al Albania and his staff at Acart Graphics designed the studies and produced some 2 400 tables and figures.

The Commission's research reports constitute Canada's largest publishing project of 1991. Successful completion of the project required close cooperation between the public and private sectors. In the public sector, we especially acknowledge the excellent service of the Privy Council unit of the Translation Bureau, Department of the Secretary of State of Canada, under the direction of Michel Parent, and our contacts Ruth Steele and Terry Denovan of the Canada Communication Group, Department of Supply and Services.

The Commission's co-publisher for the research studies was Dundurn Press of Toronto, whose exceptional service is gratefully acknowledged. Wilson & Lafleur of Montreal, working with the Centre de Documentation Juridique du Québec, did equally admirable work in preparing the French version of the studies.

Teams of editors, copy editors and proofreaders worked diligently under stringent deadlines with the Commission and the publishers to prepare some 20 000 pages of manuscript for design, typesetting

### X V i i INTRODUCTION

and printing. The work of these individuals, whose names are listed elsewhere in this volume, was greatly appreciated.

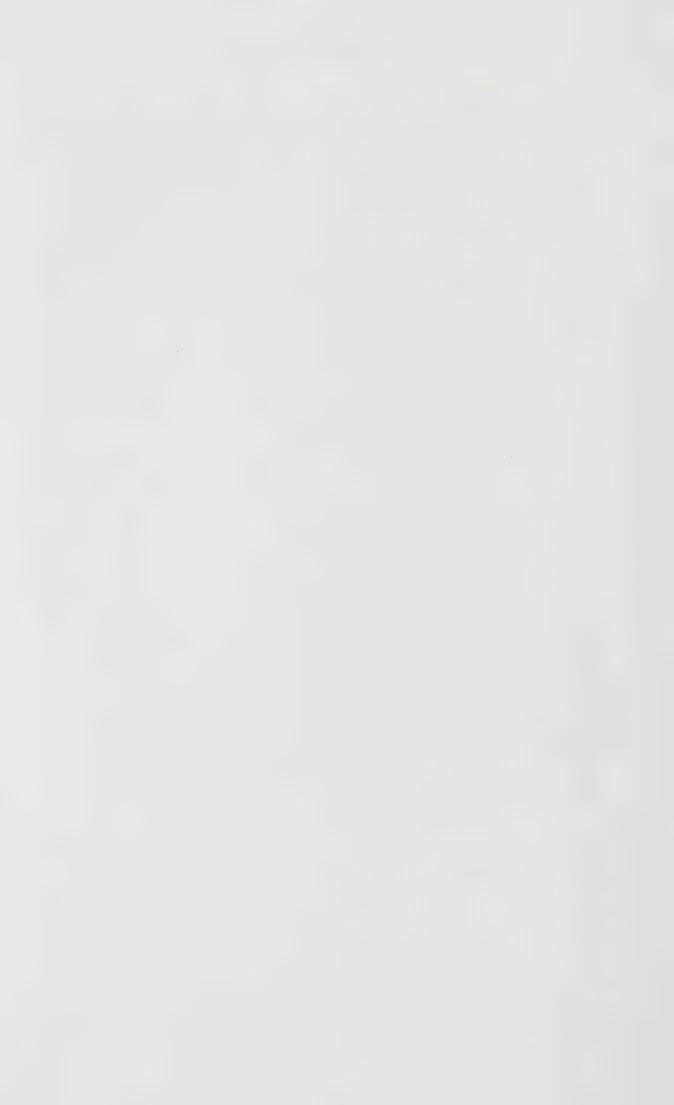
Our acknowledgements extend to the contributions of the Commission's Executive Director, Guy Goulard, and the administration and executive support teams: Maurice Lacasse, Denis Lafrance and Steve Tremblay (finance); Thérèse Lacasse and Mary Guy-Shea (personnel); Cécile Desforges (assistant to the Executive Director); Marie Dionne (administration); Anna Bevilacqua (records); and support staff members Michelle Bélanger, Roch Langlois, Michel Lauzon, Jean Mathieu, David McKay and Pierrette McMurtie, as well as Denise Miquelon and Christiane Séguin of the Montreal office.

A special debt of gratitude is owed to Marlène Girard, assistant to the Chairman. Her ability to supervise the logistics of the Commission's work amid the tight schedules of the Chairman and Commissioners contributed greatly to the completion of our task.

I also wish to express my deep gratitude to my own secretary, Liette Simard. Her superb administrative skills and great patience brought much-appreciated order to my penchant for the chaotic workstyle of academe. She also assumed responsibility for the administrative coordination of revisions to the final drafts of volumes 1 and 2 of the Commission's Final Report. I owe much to her efforts and assistance.

Finally, on behalf of the research coordinators and myself, I wish to thank the Chairman, Pierre Lortie, the members of the Commission, Pierre Fortier, Robert Gabor, William Knight and Lucie Pépin, and former members Elwood Cowley and Senator Donald Oliver. We are honoured to have worked with such an eminent and thoughtful group of Canadians, and we have benefited immensely from their knowledge and experience. In particular, we wish to acknowledge the creativity, intellectual rigour and energy our Chairman brought to our task. His unparalleled capacity to challenge, to bring out the best in us, was indeed inspiring.

Peter Aucoin Director of Research



### PREFACE



At the Heart of the Canadian system of representative government are questions of redistribution – the allocation of constituencies to the provinces and territories – and boundary adjustment – the drawing of constituency boundaries within the provinces and territories. Together, they determine the basis on which citizens elect those who govern.

The number of submissions to the Royal Commission on Electoral Reform and Party Financing suggesting changes to the existing system demonstrates the importance of these issues. In addition, the advent of the *Canadian Charter of Rights and Freedoms* has created a new dimension, guaranteeing every citizen the right to vote with the implication that each vote carries a value. The Charter guarantee ensures that, ultimately, the courts will determine that value as they balance the conflict between individual and collective rights as contained in sections 3 and 15.

Submissions to the Commission took two approaches that high-lighted this conflict: those that would move closer to the American model of "one person, one vote" and those that would move to representation by identifiable groups or "communities of interest." To examine the polar views of this basic conflict one need only examine the submissions of John Courtney of the University of Saskatchewan and Alan Cairns of the University of British Columbia.

Many identifiable groups have argued that the electoral system should be redesigned to represent their own interests. Aboriginal groups want their own electoral districts. Environmentalists believe constituencies should be drawn on ecological lines.

The studies in this volume deal with many of the redistribution concerns raised before the Commission and are the basis for the recommendations for change. As such, they are an important part of the Commission's work.

Kent Roach of the University of Toronto Faculty of Law examines the implications of the Charter for redistribution and redistricting. Professor Roach, after examining the history of redistribution and redistricting in Canada, the American experience with court-mandated "one person, one vote" and Canadian judicial decisions, concludes that the Constitution does not force equality of vote provided that departures from an equal population standard between electoral districts are limited and justified through legislation.

Howard Scarrow's work examines the development of the electoral revolution in the United States culminating in "one person, one vote" and the problems that this has created rather than solved.

A major justification for departing from strict vote equality has often been the idea of drawing electoral boundaries by "community of interest." Alan Stewart, special adviser (legal) to the Ontario chief election officer, argues that "effective representation" is best served by likeminded citizens who band together to elect the candidate of their choice, not by strict equality, even when that representation is defined in geographic terms.

One of the major problems with maintaining relative vote value, even given an allowable divergence from absolute equality, is deterioration over time under conditions of increasing urbanization in Canada. One way to resolve this problem is to redistrict more frequently. However, such an approach requires that redistricting be done on the basis of number of electors, not on population as is currently done following the decennial census. Munroe Eagles, a Canadian professor at the State University of New York at Buffalo, examines both the deterioration of vote value over time and the implications of moving to an elector- rather than population-based system.

Doug Macdonald of Toronto looks at the implications of using ecological boundaries as the basis for electoral districts and concludes that environmental concerns can be included among other criteria used by boundary commissions in determining constituency lines.

Since Confederation, there has been a trend to overrepresent rural and sparsely populated areas of provinces based on the argument that these areas present a member of Parliament with more challenges in delivering services to constituents. Alan Frizzell, director of the Carleton University Survey Centre, undertook a national public opinion survey designed to determine if the demands and requirements of constituents actually backed up this argument. His innovative sampling techniques provided an insight into the perceptions of urban, small city and rural

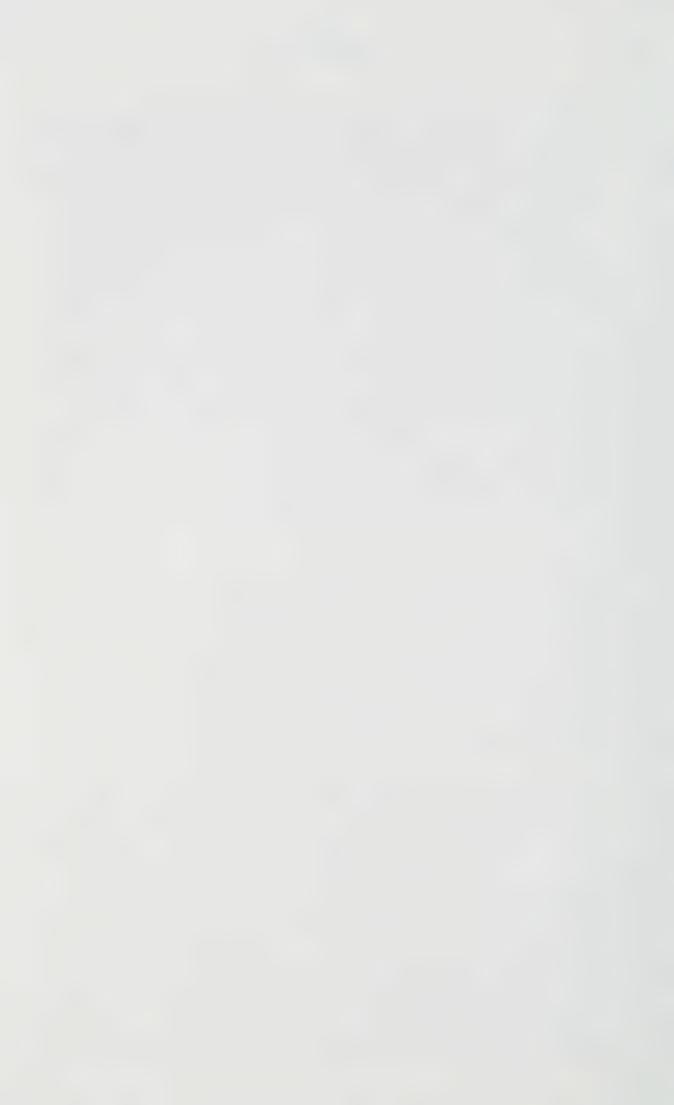
#### X X I PREFACE

voters. Based on this survey and a questionnaire to members of Parliament, this study on modern representation offers a new look at the duties and responsibilities of MPs, as seen by themselves and by their constituents. It concludes that the geographical size of electoral districts likely has little to do with the service component of an MP's job.

Finally, I applied my own interest in redistricting to an examination of the use of the existing system to enhance the voting power of Aboriginal people. The findings here show that electoral districts in many areas could be redrawn to give Aboriginal people a significant, if not majority, say in a number of constituencies.

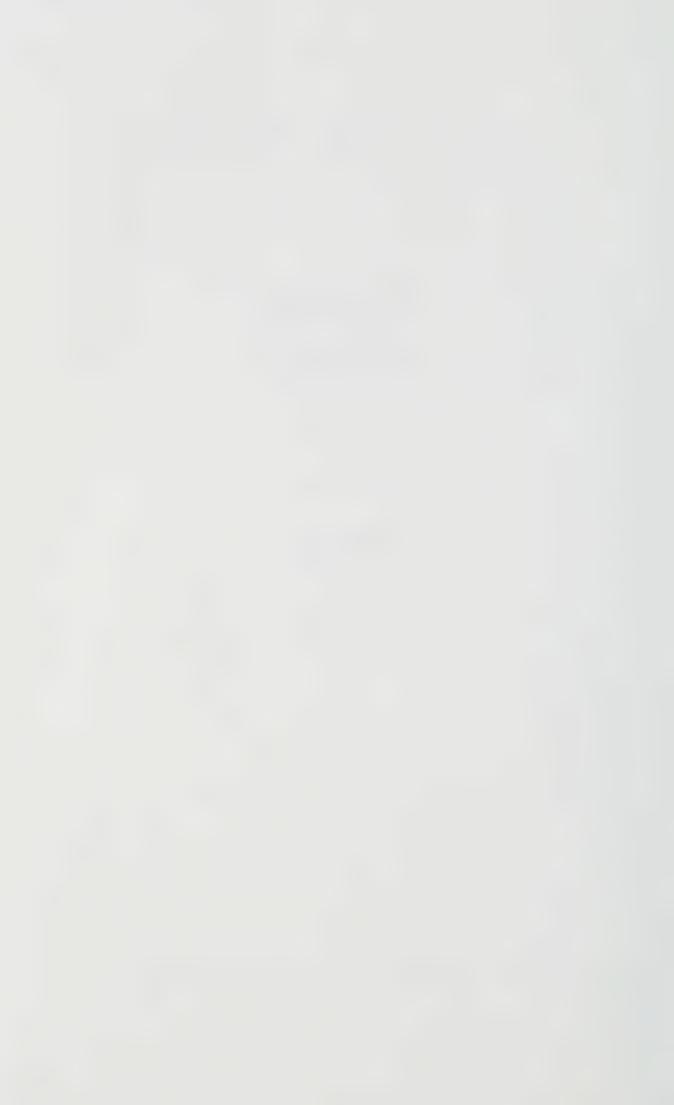
Taken together, these research studies shed new light on the problems of redistribution and redistricting, and offer new solutions. They modernize existing outlooks and provide a fresh approach that the Commission has taken into account in its recommendations.

David Small Research Coordinator



## Drawing the Map





## One Person, One Vote?

Canadian Constitutional
Standards for
Electoral Distribution
and Districting



Kent Roach

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS has been with us for only a decade, but it has already changed the way we, as Canadians, see ourselves. The Charter is much more than a legal instrument used by litigants and judges in specific cases. It has become, in a remarkably short time, an integral part of the complex dynamic that is Canadian democracy. As the most popular part of our Constitution, the Charter has affirmed in Canadians a sense of their diverse identities as individuals and as members of groups with legitimate and expandable rights. By doing this, it has challenged the primacy of the provincial and local identities promoted by the division of powers of the "old" constitution (Cairns 1990). Canadian governments today must be prepared to deal not only with other levels of government but also with citizens demanding rights as individuals and as members of disadvantaged groups. The electoral process which produces Canadian governments should be sensitive to the identities and demands that are fostered by the Charter.

Distribution of seats in the House of Commons among the provinces and territories and the districting of federal ridings within any one province are matters which, despite their complex and somewhat arcane nature, raise fundamental issues about the nature of Canadian democracy and the role of the Charter. Up to the present, Canadians have been

#### DRAWING THE MAP

represented in the House of Commons in part as individuals entitled to vote; in part as residents of a particular province or territory; and in part as residents of a particular community represented as a riding. The need to represent these multiple identities persists, but the manner in which they must be reconciled and balanced has been changed by the Charter. Received wisdom about maintaining levels of representation from less populous provinces and territories; about respecting communities of interest and identity when creating ridings; and about limiting the geographic size of ridings in sparsely populated, rural and northern regions of the country has been challenged by the new question of whether such traditional practices are compatible with the equal democratic rights that citizens are guaranteed under the Charter. In short, the Charter has introduced a new calculus of interests and a new form of accountability to electoral distribution and districting.

This study will assess the various Charter issues which may arise in the distribution and districting of seats in the House of Commons and will inevitably involve speculation about what courts might do if confronted with these issues. A few caveats must be made at the outset. Constitutional interpretation, whether by courts or commentators, is a different enterprise than the interpretation of statutes or the common law. As the Supreme Court of Canada recognized in one of its first Charter cases, courts must recognize that they are expounding a Constitution that deserves a "large and liberal interpretation" and avoids the "austerity of tabulated legalism" (*Hunter* 1984, 155–56). Peter Hogg has noted that the "policy-laden" nature of Charter cases and the "exceedingly vague terms" of the Charter combine to make "judicial review under the Charter … a formidable task, involving a much higher component of policy than any other line of judicial work" (Hogg 1985, 653).

Although they would disagree on its extent, most legal commentators would agree that Charter interpretation is to some extent indeterminate and subjective. It is becoming increasingly clear that Canadian judges are disagreeing more often on the proper approach to interpreting the Charter. Within the Supreme Court of Canada, significant differences in methods of interpretation and receptivity to Charter claims have been documented (Petter and Monahan 1988; Beatty 1990). For example, judges disagree (sometimes with themselves) over whether the Charter should be interpreted in a generous manner so as to give the rights contained in it a broad, purposive definition or whether it should be interpreted in a contextual manner in order to integrate Charter rights with Canadian history and traditions (Roach 1990). Canadian judges can draw on the values of liberal individualism or Tory collectivism, or on some synthesis of these values (Macklem

1988). Not surprisingly, they also disagree over the importance of treating individuals equally, advancing the position of disadvantaged groups in society and respecting social interests over Charter rights.

After the above observations, it would be naive to offer confident predictions about what would happen if any of the issues canvassed in this study reached the courts. As will be examined, the two leading cases that have struck down provincial districting schemes have exhibited different approaches to defining the content of the right to vote as well as the burden placed on the government to justify departures from various constitutional standards of equality of voting power (Dixon 1989a; Saskatchewan Districting Reference 1991). The uncertainty and contingency that surrounds Charter interpretation should not, however, be seen as an obstacle to the development of electoral policies concerning distribution and districting. Rather, it should be seen as an opportunity to justify any of a broad range of options in these areas as consistent with the Charter. In the way they structure and defend their laws, governments have an important impact on what the courts will eventually decide.

This study will examine the Charter's potential effects on the distribution of seats among the provinces and territories, and the districting of federal ridings within provinces and territories. These topics will be examined separately because of important differences in contexts. The most important difference is the fact that the interprovincial distribution of seats in the House of Commons is prescribed in sections 51 and 51A of the *Constitution Act*, 1867 (as amended), while intraprovincial districting is governed by the *Electoral Boundaries Readjustment Act*.

The distribution part of this study will examine whether the Charter applies to distributions already prescribed in the Constitution, before it examines whether such provisions meet the standards of equality of voting power in sections 3 or 15 of the Charter or are justified limits on these rights under section 1 of the Charter. Although the entrenchment of distribution provisions which maintain levels of representation from provinces and territories with declining and small populations may make them immune from Charter review in a court of law, it does not obviate the intellectual challenge of justifying such significant departures from a "one person, one vote" standard as a legitimate part of our constitutional fabric. Distribution raises, in a most explicit fashion, the underlying tension between the provincial and local identities associated with federalism and those individual and group identities promoted by the Charter. Understanding the context set by the distribution of seats in the House of Commons is also important in deciding whether districting should be governed by a "one person, one vote" standard.

#### DRAWING THE MAP

The second part of this study will examine the districting of federal ridings within particular provinces and territories. The courts have already assumed an important role in this area by forcing British Columbia to redistrict electoral boundaries in order to move closer to what was defined as a constitutional standard of *relative* equality of voting power (*Dixon* 1989a). More recently, the Saskatchewan Court of Appeal has held that section 3 of the Charter requires the equality of voting power provided by the "one person, one vote" principle within practical and inherent limits set by the timing of elections and enumerations. Although the Court of Appeal concluded that Saskatchewan had justified structuring its electoral map to guarantee two ridings from the remote northern part of that province, it stated firmly that the province had not begun to demonstrate that assigning rural as opposed to urban areas more ridings than their population alone demanded was justified under section 1 (*Saskatchewan Districting Reference* 1991).

It is clear that the courts will now review federal districting decisions under the Charter, but it remains to be seen whether the Supreme Court of Canada will follow the more deferential approach of requiring relative equality of voting power set out in Dixon, or whether it will follow the stricter approach taken by the Saskatchewan Court of Appeal. In any event, the further question remains whether the federal system is better justified than those declared unconstitutional in British Columbia and Saskatchewan. To that end, the focus in the second part of this study will be on the standards for districting contained in section 15 of the Electoral Boundaries Readjustment Act as it was amended in 1986 to allow for departures from a 25 percent tolerance limit from provincial quotients. The statutory and policy concepts of "community of interest," "community of identity," "historical pattern of an electoral district" and "manageable geographical size in sparsely populated, rural or northern regions" will be assessed in light of the standards that the courts have found, and may find, in sections 3 and 15 of the Charter.

Even if the Supreme Court of Canada were to follow the Saskatchewan Court of Appeal and accept a "one person, one vote" standard, the federal government might be able to justify under section 1 of the Charter the departures from this standard contemplated by the federal Act and federal boundaries. The Supreme Court's section 1 jurisprudence will be examined, in order to assess the case for justifying the present federal scheme and the contribution that various legislative reforms and social science evidence could make to this task. Finally, assuming for the sake of analysis that some districting decisions might be found to be unjustified violations of the Charter, possible remedial responses will be outlined. This is important in its own right, but it will also shed

light on how considerations of institutional competence will influence judicial involvement in districting.

### THE DISTRIBUTION OF SEATS IN THE HOUSE OF COMMONS AMONG THE PROVINCES AND TERRITORIES

#### The Distribution Context

The 1861 census showed that an equal distribution of seats between what is now Ontario and Quebec mandated under the *Act of Union*, 1840, meant that a member from Canada West represented an average of 21 000 constituents, while one from Canada East represented only 17 000 (*Campbell* 1987, 132). The perceived unfairness of this distribution meant that "rep by pop" became one of the rallying cries of proponents of Confederation in Ontario. It is important to emphasize, however, that it was a sense of regional alienation as much as the idea that each vote should carry an equal weight that animated the discontent with the pre-Confederation distribution of seats (Waite 1962; Morton 1972).

Confederation meant that the principle of representation by population would be recognized in the House of Commons, while concerns about regional representation would largely be channelled into the Senate and the formation of the Cabinet. Section 51 of the Constitution Act, 1867, provided that Quebec would have 65 seats and the other provinces "the same Proportion to the Number of its Population (ascertained at such Census) as the Number Sixty-five bears to the Number of the Population of Quebec (so ascertained)." This seemingly clear representation by population principle was, however, qualified by some concern about provinces losing seats. Section 51(4) went on to provide that no province would lose seats in future readjustments unless its relative population decreased by 5 percent or more. As has been noted in a case defining the principle of proportionate representation of the provinces prescribed by the Constitution of Canada, this provision "contemplated imperfect representation by population" (Campbell 1987, 132). Qualification of representation by population continued when both Manitoba and British Columbia, upon their subsequent entry into Confederation, were given more members in the House of Commons than their population strictly required (Lyons 1970). This reflected a belief, echoed in subsequent struggles, that a critical mass of members was required from each province to ensure a stake and a voice in the national government. It also reflected more practical concerns about making entry into Confederation attractive to the inhabitants of then sparsely populated regions.

Much of the subsequent history of distribution has reflected concerns that the less populous provinces receive "equitable" representation in the House of Commons. It must be recognized that this history has been influenced by the failure of the unelected Senate to carry out its intended role as the guardian of regional interests. The failure of the Senate eventually forced regional concerns into the interprovincial distribution of seats in the House of Commons. It is possible that a more effective Senate might have changed the pattern of distributions that have historically given smaller provinces and the territories greater representation in the House of Commons than their population alone would require. A House of Commons apportioned from coast to coast on the strict basis of population would perhaps have been viable if the regions had been effectively represented in an elected Upper House. This, of course, would resemble the situation in the modern American Congress.

When declining population threatened to reduce the number of members of Parliament in the Maritimes, particularly in Prince Edward Island, constitutional litigation was undertaken by the threatened provinces in an attempt to secure some floor in their representation. The litigation, carried all the way to the highest court in the British Empire and based on a strained interpretation of the distribution formula, only affirmed that representation must be calculated on the population-based formula devised at Confederation (Re Representation 1905). The litigation was a legal failure for the less populous provinces but was eventually a political success. In 1915, a constitutional amendment was passed providing that: "Notwithstanding anything in this Act a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such provinces" (Constitution Act, 1915, 5 & 6 Geo. V, c. 45). This provision, known as the senatorial minimum, is now contained in section 51A of the Constitution Act. 1867.

Under the senatorial minimum, Prince Edward Island has a constitutional guarantee of four members by virtue of its guarantee of four senators under section 22 of the *Constitution Act*, 1867. This means that with a 1986 census population of 126 646 and a 1988 enumeration of 89 546 voters, Prince Edward Island is represented by four members of Parliament, whereas York North in Toronto with a 1986 census population of 144 225 and a 1988 enumeration of 116 131 voters is represented by only one member. The senatorial minimum also operates to guarantee that despite its declining relative population, New Brunswick retains 10 seats with 1986 census populations between 54 607 and 88 128 and with 1988 enumerations between 38 670 and 65 269 (appendix A). The

inequalities produced by the senatorial minimum are not only prescribed in section 51A of the *Constitution Act*, 1867, but are "superentrenched" by the placement of the senatorial minimum in section 41(b) of the *Constitution Act*, 1982. Thus, along with the office of the Queen, constitutional guarantees of bilingualism, the composition of the Supreme Court of Canada and the amending formula itself, the commitment of the senatorial minimum to effective and democratic representation of the less populous provinces has taken its place on the short list of constitutional fundamentals that can only be changed by the agreement of Parliament and all 10 provincial legislatures.

Distribution practice subsequent to the enactment of the senatorial minimum reflected a concern not only that the less populous provinces should have adequate representation but also that all provinces with declining populations should be protected from the loss of members of Parliament. Constitutional amendments were made in 1946 and 1952 to protect the share of members from Quebec and Saskatchewan respectively, despite these provinces' declining populations (McConnell 1977, 102-103). The former amendment provided that the Yukon Territory and what is now the Northwest Territories would each have a member. The latter amendment included what was known as the 15 percent rule providing that, on any redistribution, the number of members from a province should not be reduced by more than 15 percent of the number set by the previous distribution. A new districting formula known as the Amalgam Formula was adopted in 1974, providing different rules to determine the number of members that "large," "intermediate" and "small" provinces were entitled to have in the House of Commons. Such differential treatment of the provinces was largely to protect the less populous provinces from the loss of representation. As Chief Justice McEachern has stated, "The Constitution at the moment after the 1982 renewal prescribed at least the Senatorial Rule, the amalgam rule and territorial representation, all of which permitted imperfect representation by population. The constitutional history of Canada has clearly been to cushion provinces against the loss of representation in the House of Commons by reason of declining relative populations" (Campbell 1987, 142). Although an equal population standard has been the starting point for distribution since Confederation, there have been constant departures from a "one person, one vote" standard in order to ensure equitable regional representation of provinces and territories that have small or declining populations.

It seems likely that judges who turn to history for a better understanding of Canadian voting rights will conclude that although population has been the dominant consideration, it has never been the sole criterion. For example, Justice McLachlin stressed in *Dixon* that

#### DRAWING THE MAP

Canada had a pragmatic, evolutionary and distinctive electoral tradition which "even in its more modern phases, accommodates significant deviation from the ideals of equal representation" (Dixon 1989a, 262). She then used this background to interpret Charter voting rights as comprehending relative equality of voting power distinct from the American approach of "one person, one vote." Nevertheless, history is open to different interpretations and different uses. The Saskatchewan Court of Appeal, in its Reference re Electoral Boundaries Commission Act (Sask.), ss. 14, 20 (Saskatchewan Districting Reference), was considerably less sanguine about Canadian electoral traditions. It emphasized the legacy of invidious restrictions on the franchise placed on women and various minorities, and past abuses such as partisan gerrymandering and "rotten boroughs" which diluted voting rights, and concluded, "The suppression of fundamental democratic values in earlier times ought not to lead us to a restricted view of the democratic rights enshrined in the Charter. Indeed, the practical political experience of the past is of limited value in passing upon the nature of such a basic democratic right as the right to vote ... the Charter is not 'neutral.' It does not seek to continue past abuses" (Saskatchewan Districting Reference 1991, 45). From this rejection of the past, the Court of Appeal turned both to American authority and to a faith in a "progressive expansion of voters' rights," focusing on "the inherent worth of a person's vote" (ibid., 18) to justify interpreting section 3 of the Charter as requiring a "one person, one vote" standard subject to practical and inherent limitations. At this juncture, my purpose is not to evaluate these divergent interpretations of Canadian history, but rather to underline that history itself cannot change the indeterminacy of Charter interpretation.

The current distribution formula enacted by Parliament in the Constitution Act, 1985 (Representation), pursuant to its powers under section 44 of the Constitution Act. 1982, to amend the federal constitution as it relates to the House of Commons, is consistent with the traditional practice of tempering representation by population with concerns about equitable regional representation. It contains an explicit guarantee in section 51(1) that despite the application of a population-based formula, the provinces will always be guaranteed as a minimum the same number of members as assigned on the date of the coming into force of the new formula.1 Courtney reports that the combined operation of the senatorial minimum and the new "grandfather" provisions has the present effect of granting six provinces a total of 12 seats more than their population alone would require, and that the latest population projections suggest that, after the 1991 census, the total will be seven provinces and 17 seats. Thus, only Ontario, British Columbia and Alberta will not have their representation bolstered by various distribution provisions

entrenched in the Constitution (Courtney 1988, 687). In addition, the provision of one member from the Yukon Territory and two from the Northwest Territories is specifically guaranteed under section 51(2), even though a strict application of an equal population standard would not produce three ridings in these vast and sparsely populated areas.<sup>2</sup>

From this survey, it is clear that although distribution of seats in the House of Commons since Confederation has been tied to population, several exceptions have been made to ensure effective regional representation of provinces and territories with small or declining populations. No doubt, this regionalization of distribution has been related to the failure of the Senate to ensure effective and democratic regional representation.

## The Applicability of the Charter to Constitutional Distributions

The distribution of seats among the provinces and territories as it is prescribed in sections 51 and 51A of the *Constitution Act*, 1867 (as amended), raises specific issues in the applicability of the Charter. These issues are distinct from more general concerns about the justiciability of electoral distribution or districting decisions that will be discussed in the second part of this study when the applicability of the Charter to districting issues will be examined.

An argument can be made that the departures from equal population standards required by section 51 and especially section 51A of the Constitution Act, 1867, are immune from Charter review on the basis that one part of the Constitution (sections 3 and 15 of the Charter and the standards of equality of voting power that may be found there) cannot be used to negate the existence of another (sections 51 and 51A of the Constitution Act, 1867, which require departures from equality of voting power). Support for this argument can be found in the Supreme Court of Canada's decision in the Reference re Act to Amend the Education Act (Ont.) (Separate Schools Reference). In this case, the Court held that a religious distinction and the power to legislate in relation to Protestant and Roman Catholic denominational schools, created in section 93 of the Constitution Act, 1867, rendered not only the constitutionally sanctioned distinction but also the exercise of provincial jurisdiction under section 93 to increase funding to Roman Catholic schools immune from review on the basis of freedom of religion and conscience in the Charter. Wilson J., speaking for a plurality of the Court, deliberately avoided basing her reasoning on the narrower basis that section 29 of the Charter specifically saves denominational school rights under the Charter, and stated:

It was never intended, in my opinion, that the Charter could be used to invalidate other provisions of the Constitution, particularly a provision such as s. 93 which represented a fundamental part of the Confederation compromise ... [T]he province is master of its own house when it legislates under its plenary power in relation to denominational, separate or dissentient schools. This was the agreement at Confederation and, in my view, it was not displaced by the enactment of the *Constitution Act*, 1982. As the majority of the Court of Appeal concluded:

These educational rights, granted specifically to the Protestants in Quebec and the Roman Catholics in Ontario, make it impossible to treat all Canadians equally. The country was founded upon the recognition of special or unequal educational rights for specific religious groups in Ontario and Quebec. The incorporation of the Charter into the Constitution Act, 1982, does not change the original Confederation bargain. A specific constitutional amendment would be required to accomplish that.<sup>3</sup> (Separate Schools Reference 1987, 60–61 [D.L.R.])

Thus, the Supreme Court will not allow the Charter to override other parts of the Constitution, at least those that were "a fundamental part of the Confederation compromise."

The courts have not yet confronted the issue of whether distributions under sections 51 and 51A of the Constitution Act, 1867, can be reviewed under the Charter. It is interesting to note, however, that the majority decision of the Ontario Court of Appeal, which Justice Wilson quotes with approval above, expressed the view that the courts could not "hold ss. 51 or 51A of the Constitution Act, 1867, as amended, invalid because some provinces are accorded more members to the House of Commons in relation to population than are other provinces" (Separate Schools Reference 1986, 54). In other words, even if the right to vote or the equality rights require that the distribution of members among the provinces and territories be done on the strict basis of population, these judges have expressed the opinion that the Charter right should not be allowed to negate the departures from strict representation of population prescribed in sections 51 or 51A. The opinion expressed by the majority of the Ontario Court of Appeal is, in a technical sense, not binding on them (much less on the Supreme Court of Canada) because it was only necessary in that case to decide if section 93 of the Constitution Act, 1867, was immune from Charter scrutiny. Nevertheless, the reasoning does have a persuasive logic; if section 93 is immune from Charter review because it is part of the Constitution Act, 1867, then other parts of that document such as the distribution formula and the senatorial minimum should also be immune. If the courts are not to accept this conclusion, they must at least explain why a distinction should be made between section 93 and sections 51 and 51A of the *Constitution Act*, 1867.

One possible way to distinguish section 93 from sections 51 and 51A would be to argue that constitutional distributions are not as fundamental a part of the Confederation bargain as the denominational school rights set out in section 93. The senatorial minimum in section 51A was added to the Constitution in 1915; and the distribution formula set out in section 51, including the "grandfather" and territories provisions, has been changed repeatedly by Parliament in the exercise of its unilateral powers to amend the federal constitution. This argument is weakest in terms of the senatorial minimum, which does appear to have the status of a fundamental constitutional promise to the less populous provinces that the introduction of the Charter was not meant to destroy. This conclusion is supported by two points. First, section 51A guaranteeing the senatorial minimum applies "Notwithstanding anything in this Act," referring in a literal sense only to the Constitution Act, 1867, but denoting the overriding effect that the senatorial minimum was intended to have over the population-based distribution formula. Second, the senatorial minimum was reaffirmed as a fundamental constitutional provision by its "super-entrenchment" in section 41 of the Constitution Act, 1982, among the short list of constitutional provisions which require unanimous consent of all 11 governments to amend. Thus, in 1982, while the Charter arguably introduced concerns about equality of voting power under the right to vote in section 3 and the equality rights of section 15, the less populous provinces such as Prince Edward Island were also given a constitutional guarantee that they would have a veto before their representation in the House of Commons was reduced to the level that their population alone would require. Although the guarantee of a veto is directed at governments through the amending formula and not the courts, it is doubtful - in light of the Separate Schools Reference and the special status of the senatorial minimum - that courts would allow Charter standards of equality of voting power to override the senatorial minimum.

The case for holding that the distributions in section 51 of the *Constitution Act*, 1867 (as amended), are subject to Charter review is stronger. The distribution formula set out in section 51, although included in the Constitution of Canada in a formal sense, is functionally enacted and amended by the House of Commons in the exercise of its unilateral power under section 44 of the *Constitution Act*, 1982, to amend the Constitution of Canada in relation to the House of Commons. The

breadth of the Supreme Court's holding in the *Separate Schools Reference* has been criticized (Bale 1989), and it is possible that the Court might retreat from the implication of that decision that any exercise of a constitutionally recognized federal jurisdiction to prescribe representation in the House of Commons would be immune from Charter review.

One of the arguments that might fuel such a retreat is a functional argument made by Justice McEachern in the course of the Dixon litigation to justify holding electoral boundaries in British Columbia's own Constitution Act up to the standards of the Charter, even if they were passed under British Columbia's unilateral powers to amend its own provincial constitution. Justice McEachern reasoned that whatever the claims of British Columbia's Constitution Act establishing electoral boundaries to constitutional status, the legislation is still amended from time to time by a majority of the British Columbia legislature and as such is covered by section 32(1)(b) of the Constitution Act, 1982, which states that the Charter applies to the legislature and government of each province in respect of all matters within its authority (Dixon 1986, 559). Similarly, in her 1989 decision in the Dixon case, Justice McLachlin held the same legislation susceptible to Charter review by rejecting the argument that everything a province placed in its provincial constitution was immune from Charter review from the Supreme Court of Canada's holding in the Separate Schools Reference that an express religious distinction and jurisdiction over separate schools was immune from Charter review (Dixon 1989a, 252). A court concerned with the same functional concerns as noted by these two judges might conclude that electoral laws made pursuant to Parliament's unilateral powers to amend the Constitution in relation to the House of Commons should also be susceptible to judicial review under the Charter. Thus, section 51's "grandfather" provision, as well as its guarantee of three members for the territories, could be held subject to Charter review.

Despite the strong functional support for the above argument (the Charter should apply to what Parliament does through a simple majority), its formal basis is weak. Although Parliament has from time to time enacted distribution formulae which depart from representation by population through its unilateral powers, it does this through what is in form an amendment to the *Constitution Act*, 1867. The functional arguments made by Judges McEachern and McLachlin in the *Dixon* case were based on the premise that even though the British Columbia boundaries may be part of the provincial constitution, they certainly were not part of the Constitution of Canada, which they defined narrowly as those Acts which are specifically listed in an appendix to the *Constitution Act*, 1982. In contrast, the distribution formula in section 51

is no less a part of the Constitution of Canada than are the distinctions and legislative powers set out in section 93 of the *Constitution Act*, 1867, and held by the Supreme Court to be immune from Charter review.

It should also be noted that Parliament's unilateral powers to amend the Constitution in relation to the House of Commons are not unlimited. Section 42(1)(a) provides that the general amending formula (requiring the agreement of at least seven other governments) applies should Parliament purport, under its unilateral amending powers, to amend "the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada." The courts have recognized that although this principle of proportionate representation is not equivalent to pure representation by population, it is one in which population remains the dominant consideration (Campbell 1987). Thus, were Parliament to attempt to use its unilateral powers to enact a new distribution that constituted a substantial deviation from population standards (e.g., an equal number of members for each province), the requirement that the general amending formula must be used to amend the principle of proportionate representation of the provinces would apply. The fact that section 42(1)(a) of the Constitution Act, 1982, places some constitutional limits on Parliament's exercise of its unilateral powers to depart from population standards suggests that courts could hold the relatively minor deviations from population standards achieved through the "grandfather" and territorial provisions of section 51 to be immune from Charter review, without conceding to Parliament the power to make drastic departures from distribution on the basis of population.

What, then, is the significance of the conclusion that the senatorial minimum and perhaps even the distribution formula are immune from Charter review? Simply that some of the most significant departures from "one person, one vote" in the federal electoral system are achieved through distribution of seats between the provinces and the territories that are themselves part of the Constitution. It is possible to greet this conclusion with cynicism: the old constitution pre-empts the new values of the Charter. A more constructive response is to recognize that the senatorial minimum as well as the recent "grandfather" and territorial provisions are a legitimate component of our constitutional values, and to integrate their concerns into a Canadian understanding of how equality of voting power is protected under the Charter. Other parts of the Constitution should be seen as a source of the values which make Canada free and democratic.

The remaining portions of the discussion of distribution in this study will begin this task of integrating constitutional concerns about equitable regional representation of less populous provinces and territories

with the values of the Charter by suggesting that even if sections 51 and 51A of the *Constitution Act*, 1867, are subject to review under the Charter, they could well be upheld under the Charter.

## The Right to Vote and Distribution

Section 3 of the Charter provides: "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." If interpreted in a literal sense, this provision would only protect the right of citizens to cast their ballots in federal and provincial elections. In what is now a well-established canon of Charter interpretation, courts have refused to read Charter rights in a literal or narrow sense if to do so would diminish the scope and purpose of their protection. Applied to voting rights, this means that courts will concern themselves with the purposes and interests that the right to vote is designed to protect. A constitutional right to vote must do more than protect the citizen's procedural right to cast a ballot. For example, if the Charter protected only the casting of a ballot but did not ensure that the citizen's votes were counted or that only one vote of each qualified voter was counted, the Charter right to vote would become a sham.

In protecting the substantive content of the right to vote, the courts will be concerned with the effect of a citizen's exercise of his or her right to vote. Citizens exercise their democratic right to vote in order to influence the outcome of elections and in turn the outcome of the parliamentary process. If a small group of individuals could elect a member of Parliament because they lived in a riding with a small population, these individuals would in theory have more democratic influence than those who live in a riding with a larger population and who must combine with more people before they can elect their candidate to the House of Commons. Thus, a concern with the effects and substantive purposes of the right to vote will lead courts to be concerned with the equality of voting power that each individual entitled to vote possesses.

The conclusion that the right to vote comprehends equality of voting power has been accepted in early jurisprudence defining section 3 of the Charter. In *Dixon*, Justice McLachlin concluded: "The concept of representation by population is one of the most fundamental democratic guarantees. And the notion of equality of voting power is fundamental to representation by population" (*Dixon* 1989a, 259). Justice McLachlin derived the concern about equality of voting power both from the history of demands for "rep by pop" which led to Confederation and from the theory that each individual is entitled to equal respect and an equal voice in a democracy. Likewise, the

Saskatchewan Court of Appeal stressed that voting rights can be diminished not only by the denial but also by the dilution of the ballot and the consequent influence each individual has on elections and subsequent parliamentary deliberations. The court stated:

As the ideas of freedom and democracy are inextricably linked, so too are the ideas of equality and democracy. Notionally, no person's portion of sovereign power exceeds that of another. And so we speak of "one person—one vote," and so it is the idea of equality is inherent in the right to vote: *Dixon* (supra) 247. In our view then, the "one person—one vote" principle is the guiding ideal in evaluating electoral distribution schemes. (*Saskatchewan Districting Reference* 1991, 460)

Thus, it appears that section 3 will protect not only the right to cast a meaningful ballot but also the right to cast a ballot that carries with it an equal portion of democratic power.

Although interpreting section 3 of the Charter to protect equality of voting power gives that right meaningful content and provides protection from extreme inequities in voting power, it is not clear if a demand for strict equality of voting power fits well within the broader context of Canadian parliamentary democracy or other values contained in the Constitution. For example, a stress on strict equality of voting power in section 3 of the Charter would require courts to enforce equality outside of the context of the equality rights protected under section 15 of the Charter. The idea that each individual's vote should have an equal mathematical weight is supported by the notion that each individual should receive equal treatment in a democracy, but it does not necessarily situate individuals in the context of their identity as members of a particular community or group, or have regard to their actual situation in society. Strict equality of voting power would not tolerate the notion that some people, in particular vulnerable minorities, can legitimately be accorded preferential treatment different from that received by the majority. Such a principle is recognized in section 15(2) of the Charter, which states that equality rights do not preclude a law "that has as its object the amelioration of conditions of disadvantaged individuals or groups."

Alan Stewart has noted that "some systematic population preferences, such as those in favour of remote, disadvantaged northern regions of provinces, might fall under the affirmative action exception of section 15(2) if equal representation rights were based on section 15 alone" (Stewart 1990, 358). An insistence under section 3 on strict equality of voting power is not only in tension with section 15(2) but also with the Supreme Court's approach to equality rights. As will be discussed later,

the Supreme Court has made it clear that under section 15 unequal treatment will not, in itself, constitute a violation, but only where the unequal treatment is "with discrimination" in the sense that the group disadvantaged by the law is vulnerable to broader forms of political, legal and social discrimination and prejudice (*Andrews* 1989). Unless the distinctive nature of voting rights makes the formal equality of similar treatment a good in itself, "one person, one vote" stands at odds with our present understanding of equality rights. The development of voting rights under section 3, as opposed to section 15, may give the "one person, one vote" principle a legitimacy that it would not have under other parts of the Constitution.<sup>6</sup>

A requirement of strict equality of voting power may not only be at odds with Canadian understandings of equality rights but also with the nature of Canadian democracy. Arguments that the "right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise" (*Reynolds* 1964; *Saskatchewan Districting Reference* 1991, 460) can be criticized as inconsistent with the realities of representative democracy. As one dissenter to the American "one person, one vote" standard maintained: "Legislators do not represent faceless numbers. They represent people, or, more accurately, a majority of voters in their districts – people with identifiable needs and interests which require legislative representation, and which can often be related to the geographical areas in which these people live" (*Lucas* 1964, 750).<sup>7</sup>

Although, in theory, people in a riding or a province that would receive more members if seats were distributed strictly on the basis of population have to combine with more people to elect a representative, this does not necessarily mean that they are not equitably represented in the House of Commons. They still exercise a meaningful franchise. If they are members of more populous groups with common interests, they may find that they are effectively represented not only by their own MP but by other like-minded MPs. This insight is particularly important in the context of the patterns of population distribution set by Canadian geography. Population is concentrated in a few provinces, and within each province it is generally concentrated in southern urban areas. Canadian parliamentary democracy with its multi-party and "first-by-the-post" electoral system means that representation has never been a direct result of each individual's mathematical voting power; rather, it has been a result of the concentration of various interests in particular locations (Cairns 1988, chap. 4). In Canada, we have never accepted that all those who do not vote for their MP and for the party which eventually holds the balance of power in the legislature "lose" their ballots or have their share of sovereign power diminished.<sup>8</sup> To do so would cast doubt on our form of indirect parliamentary democracy and would compel consideration of more direct forms of proportional representation.

Canadian courts have accepted equality of voting power as a value protected by section 3, but in the final analysis it remains to be seen if they will add a qualitative gloss to this concept in order to situate it better in the context of Canadian parliamentary democracy and other constitutional values, including constitutionally prescribed distributions to give the less populous provinces and territories more members than are required by the principle of "one person, one vote." The settlement of this question will depend in no small part on whether the Supreme Court of Canada favours the interpretation of section 3 as guaranteeing relative equality of voting power or requiring strict equality of voting power within the inherent and practical limitations set by the timing of enumerations and elections.

Although Justice McLachlin recognized equality of voting power as a value protected under section 3, her rejection of a strict "one person, one vote" standard suggests that she understands that concept in a qualitative and contextual sense. Her rejection of the American "one person, one vote" approach was largely based on a desire to interpret the right to vote in the context of Canadian history and traditions. Justice McLachlin quotes with approval a comment by then Justice Lamer: "We would, in my view, do our own Constitution a disservice to simply allow the American debate to define the issue for us, all the while ignoring the truly fundamental structural differences between the two constitutions" (Reference re s. 94(2) of Motor Vehicle Act 1985, 546 [D.L.R.]). The reference to structural differences between the two constitutions is particularly significant in the distribution context. As we have seen, significant departures from an equal population standard are already a part of the Canadian Constitution as set out in sections 51 and 51A of the Constitution Act, 1867. It would be anomalous, given these constitutionally enshrined departures from a strict "one person, one vote" standard, to hold that the Charter guaranteed a strict "one person, one vote" standard.

In *Dixon*, Justice McLachlin concluded that there was no evidence that the framers of the Charter had intended to change electoral traditions by introducing a strict "one person, one vote" standard. Although reliance on the intent of the framers to determine the meaning of Charter provisions has largely been discredited by the Supreme Court of Canada as a method of Charter interpretation (ibid., 550–55), Justice McLachlin did cite more persuasive evidence about the structure of the Constitution

in support of her conclusion that the Charter does not guarantee a strict "one person, one vote" standard:

[T]he only provision in the *Constitution Act*, 1982 dealing with electoral apportionment places regional considerations over strict "rep by pop". Section 42(1)(a) provides that "the principle of proportionate representation of the provinces in the House of Commons" is subject to the amending formula in section 38, and section 42(1)(a) provides that a province cannot have fewer seats in the Commons than in the Senate. Interpreting section 3 of the Charter as requiring mathematical equality of voting power would seem to run counter to these provisions. (*Dixon* 1989a, 265)

When sections 51 and 51A of the *Constitution Act*, 1867, are added to this list, the case that the structure of the Canadian Constitution tolerates departures from a strict equal population standard becomes quite strong without reliance upon what the intent of the framers of the Charter might actually have been when devising the right to vote under section 3.

Justice McLachlin reaches the conclusion that although section 3 of the Charter does not require absolute equality of voting power, it does guarantee relative equality of voting power. This standard is a compromise between the "one person, one vote" standard that is suggested by the theoretical concern about the value of a vote and the equal worth of each individual, and more contextual concerns about the operation of Canadian democracy and the perceived need for equitable representation of those who live in less populous regions (Roach 1990). Justice McLachlin concludes that population should be the "dominant consideration in drawing electoral boundaries" and that deviations are justified if "they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographical factors within the territory governed" (Dixon 1989a, 266-67). Although she does not attempt to define exhaustively what factors justify departures from an equal population standard, Justice McLachlin is confident enough about the importance of "regional interests meriting representation" and "geographical considerations affecting the servicing of a riding" to list these among factors which, by contributing to better government, justify departures from equal population principles (ibid., 267).

Would the present distribution of seats in the House of Commons meet the *Dixon* criteria? The distribution formula established under section 51 establishes population as the dominant criterion. Each provincial quotient is determined by dividing the census population of all provinces by the numbers of members of the House and by dividing

the population of each province by the quotient so obtained. As with the original section 51 of the *Constitution Act*, 1867, this formula establishes representation by population as the dominant factor in allocating members to each province.

The departures from the basic equal population standard contained in the "grandfather" provisions of section 51(1), the guarantee of members for the Yukon and the Northwest Territories in section 51(2), and the senatorial minimum of section 51A are all included for specific reasons that can arguably "contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed." The senatorial minimum provision was devised to ensure regional representation of less populous provinces by tying representation in the House of Commons to the number of senators in an appointed Upper House that was designed (but unable to fulfil) its function of regional representation. The "grandfather" provisions serve the purpose of ensuring constant levels of regional representation, but they are not as closely related to the end of equitable regional representation when they protect more populous provinces with declining populations from the loss of members. The guarantee of two seats for the Northwest Territories and one seat for the Yukon serves the purpose of regional representation as well as meeting geographical concerns about limiting the size of the area governed. With respect to the former, the territories' lack of provincial status makes their representation in the House of Commons especially important; with respect to the latter, the Arctic riding of Nunatsiaq, with a 1986 census population of 19 952 and a 1988 enumeration population of 11 392, already spans four time zones (appendix A) (Boyer 1987, v. 1, 105). Thus, present distributions are all designed to contribute to the better government of the populace as a whole and would, in all likelihood, not violate section 3 as it was interpreted in Dixon.

In contrast to this, present distributions would infringe section 3 as that section has been interpreted by the Saskatchewan Court of Appeal. That court defined the value of equality of voting power in an absolute fashion subject to practical limitations. Quoting American commentary and authority, it stated that "a citizen is shortchanged if electoral abuses or distribution rules dilute that citizen's portion of 'sovereign power'" and that "the weight of a citizen's vote cannot be made to depend on where he lives" (Saskatchewan Districting Reference 1991, 461). Thus, the starting point for distribution or districting must be the "one person, one vote" standard subject only to practical problems tied to the timing of the census and elections. Applying this test, distribution provisions such as the senatorial minimum, the

"grandfather" provisions and the representation of the territories would violate section 3 in both their purpose and effect because they are designed to give citizens in areas with small and declining populations more members of Parliament than would be required by the application of an equal population standard. The Court of Appeal unequivocally concluded that the Saskatchewan scheme which gave rural and northern ridings a disproportionate number of members, both for geographical reasons affecting the servicing of the ridings and to ensure regional representation, was incompatible with the values of equal voting power protected by section 3 of the Charter.

The likely conclusion that present federal distribution provisions would violate section 3 of the Charter as interpreted by the Saskatchewan Court of Appeal, however, would not end the matter. That court clearly contemplates that some limits on strict equality of voting power can be justified by the government under section 1 of the Charter. The possible section 1 justifications for the present distribution of seats in the House of Commons will be discussed shortly. It is important to emphasize, however, that switching the debate about departures from equal population standards from section 3 to section 1 also changes its terms. The debate is no longer about whether the factors simply contribute to "better government of the populace as a whole" (Dixon 1989a); rather, it is on whether they are "pressing and substantial" enough to justify overriding Charter rights and whether they are implemented in a proportionate manner which infringes the "one person, one vote" standard as little as possible (Oakes 1986; Saskatchewan Districting Reference 1991).

## The Right to Equality and Distribution

As has been seen, the present distribution of seats gives less populous provinces and territories more members in the House of Commons than they would be entitled to on a strict population basis. Does this violate the equality rights of individuals in the more populous provinces? To answer this question, it is necessary to understand both section 15 of the Charter and the Supreme Court's interpretation of this fundamental part of our Constitution.

Section 15 of the Charter provides as follows:

15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

This section protects equality rights in a broad fashion. In response to narrow readings of the right to equality before the law under the *Canadian Bill of Rights*, the framers of the Charter provided that every individual is not only equal before the law but is also equal under the law and has the right to the equal protection and benefit of the law. The breadth of these protections means that the operation of the senatorial minimum, "grandfather" and territorial distribution provisions in sections 51 and 51A of the *Constitution Act*, 1867, will, in all likelihood, be held to deny individuals in those provinces that do not receive their benefits equality under the law or the equal benefit of the law. That is, the provisions in question treat individuals in the disfavoured provinces more harshly by making the value of their votes "worth less" in electing a member to the House of Commons than the votes of those in the less populous provinces and territories.

Note that section 15 is concerned with the equal extension of whatever benefits or protections that an impugned law, either in its purpose or effect, extends. It is not necessary to classify equality of voting power as a fundamental interest for courts to conclude that laws have not extended this benefit in an equal fashion. It is only necessary to demonstrate that one of the four broadly defined equality rights has been violated. Moreover, at this stage of section 15 analysis, courts are not likely to consider any justifications that may be made for unequal treatment under the impugned provisions. As Justice Wilson stated in a leading case, "The argument that section 15 is not violated because departures from its principles have been widely condoned in the past and that the consequences of finding a violation would be novel and disturbing is not, in my respectful view, an acceptable approach to the interpretation of Charter provisions" (Turpin 1989, 32). In short, it is probable that should courts examine the distribution provisions, they will find that these infringe the equality rights of individuals in the more populous provinces by denying them equality under the law or the equal benefit of the law in terms of the democratic influence that can be exerted by casting a ballot.

The conclusion that equality rights are violated does not end the matter. In order to find that section 15 of the Charter has been violated, it is necessary to conclude that equality rights have been violated "with

discrimination." In its leading case interpreting section 15 of the Charter, the Supreme Court of Canada described discrimination in the following manner: "[D]iscrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society" (Andrews 1989, 18). This definition combines the sensitive search for relative disadvantage that led to a broad reading of the underlying equality rights with a concern for discrimination on the basis of "personal characteristics" which are enumerated in the specific grounds of discrimination listed in section 15 or analogous to them. This "enumerated and analogous grounds" approach to equality rights requires the court to examine the group claiming to be discriminated against, not only in the narrow context of the law being challenged (which by definition will somehow disadvantage the group if its equality rights have been violated) but in the wider social, political and legal context. As Justice Wilson stated for an unanimous Court in R. v. Turpin: "A finding that there is discrimination will, I think, in most but perhaps not all cases, necessarily entail a search for disadvantage that exists apart from and independent of the particular legal distinction being challenged" (Turpin 1989, 34).

In R. v. Turpin the Supreme Court held that equality rights of people accused of murder in Ontario were not violated when they were denied a benefit on the basis that they were not tried in Alberta, which alone of all the provinces provided them with the option of being tried without a jury. Justice Wilson concluded that "it would be stretching the imagination to characterize persons accused of ... [such] crimes ... in all the provinces except Alberta as members of a 'discrete and insular minority' ... [A] search for indicia of discrimination such as stereotyping, historical disadvantage or vulnerability to political and social prejudice would be fruitless in this case" (ibid., 35). It should be noted that the claim here was the implausible one that all those accused of murder and other serious offences in every province except Alberta were the victims of discrimination. Other than the very legal distinction found to violate equality rights, there was, as Justice Wilson suggested, little evidence that those accused in all the provinces and territories except Alberta were the victims of discrimination or were even vulnerable to systemic prejudice as compared to those accused in Alberta.

In R. v. Turpin the Supreme Court was careful not to declare that a person's province of residence could never be a protected ground of

discrimination under the "enumerated and analogous" approach that it had adopted in Andrews. Justice Wilson stated specifically: "I would not wish to suggest that a person's province of residence or place of trial could not in some circumstances be a personal characteristic of the individual or group capable of constituting a ground of discrimination. I say simply that it is not so here" (Turpin 1989, 36). In the recent case of R. v. S. (S.) (1990, 300), the Supreme Court has affirmed that whether the province of residence can be a protected ground of discrimination under section 15 must be decided by "a case-by-case approach." The Court concluded in that case that a federal law that allowed provinces to decide whether to provide alternative measures instead of judicial proceedings under the Young Offenders Act did "not amount to a distinction which is based upon a 'personal characteristic' for the purposes of s. 15(1) of the Charter." This conclusion was reached despite the fact that the youth claiming discrimination came from Ontario, the only province not to make alternative measures available to young offenders. Thus, the Supreme Court has quickly gone from finding in *Turpin* that those who receive less advantageous treatment in nine provinces are not the victims of discrimination, to finding in R. v. S. (S.) that those in the only province not to provide the legal benefit of alternative measures were not the victims of discrimination.

From the above cases, it is clear that courts will not conclude that section 15 of the Charter has been violated just because various distribution provisions treat individual voters in the more populous provinces less favourably than those in less populated provinces and territories. A strong argument can be made that, when the impugned distribution distinctions are considered not only on their own terms but in the broader social, political and legal context, those from the more populous provinces are not the victims of discrimination or even vulnerable to discrimination. For example, the underrepresented individuals from the more populous provinces who do not receive the benefit of the "grandfather" or senatorial minimum provisions likely have more ready access to other means of democratic influence such as the media or various federal officials. Moreover, their interests are better protected because more members in total come from ridings that share similar regional characteristics. In the context of Canadian democracy, it would "be stretching the imagination" to characterize individuals from provinces such as Ontario, Alberta and British Columbia as analogous to those disadvantaged groups specifically listed in section 15 of the Charter. As such, they are not the type of vulnerable minority that should be protected under the Supreme Court's "enumerated and analogous grounds" approach to section 15.

Individuals in the less populous provinces and territories favoured by distribution provisions are much closer to the type of disadvantaged group that section 15 is designed to protect. It can be argued that identical treatment of individuals in all provinces and in the territories on the basis of a "one person, one vote" standard would actually foster the existing political and social disadvantages suffered by those from the less populated regions. This argument is particularly strong with respect to the guarantee of three members to the territories, which include a large percentage of Aboriginal people who under section 15 and Aboriginal rights provisions are recognized as deserving of distinct treatment. Even if courts are unwilling to accept characterization of the less populous provinces as disadvantaged in the wider social, political and legal context, they have shown themselves to be extremely reluctant to recognize an individual's province of residence as a ground of discrimination.

#### **Section 1 Justifications for Present Distributions**

Even if the Charter does apply to present distribution provisions and they are found to violate section 3 or section 15 of the Charter, the government will have an opportunity to demonstrate that the limits placed on equal voting power are reasonable and demonstrably justifiable in a free and democratic society.

Section 1 of the Charter provides: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The recognition in section 1 that an individual's constitutional rights may legitimately be limited by important social objectives makes it likely that even if the Supreme Court of Canada were to require a "one person, one vote" standard, governments would be able to justify important and well-tailored departures from that standard. For example, although the Saskatchewan Court of Appeal concluded that the government had failed to justify assigning rural residents a disproportionate number of seats, it had "no difficulty" in concluding that substantial deviations from such a standard were justified under section 1 to ensure that there be two ridings from the remote and sparsely populated northern region of the province.

Section 1 of the Charter provides governments the opportunity to demonstrate important reasons for departing from a "one person, one vote" standard and allows courts the flexibility to tolerate such departures without necessarily drawing their own arbitrary limits. However, section 1 has in general imposed rigorous standards of justification and,

especially, proportionality. The demands of section 1 mean that reform may be necessary to improve and tighten laws which in their present condition could not survive section 1 scrutiny. Moreover, the *Saskatchewan Districting Reference* decision suggests that governments should be prepared to lead tangible evidence, most likely from the social sciences, to demonstrate that the reasons for departing from a "one person, one vote" standard are concerns that are pressing and substantial in a free and democratic society, and that these goals have been advanced in a proportionate fashion.

The standard for justifying laws under section 1 remains the test that the Supreme Court articulated in *R. v. Oakes*. At times, the Court has appeared to back off from the full rigour of this test, but it remains the framework within which Charter violations will be assessed.

As a preliminary matter under the *Oakes* test, a limit on a Charter right must be prescribed by law. The senatorial minimum of section 51A and the "grandfather" and territorial provisions of section 51 meet this requirement. They describe in detail the way departures from equal population standards will be made in the distribution process.

The Oakes test, then, has two main aspects: one pertaining to the importance of the objective of any limit of a Charter right; the other involving the proportionality of the limit. First, the law limiting the Charter right must relate "to concerns which are pressing and substantial in a free and democratic society" (Oakes 1986, 138–39). With the exception of the Saskatchewan Districting Reference, courts have been relatively deferential at this stage of the section 1 analysis and have accepted a broad range of governmental objectives as of sufficient importance to justify overriding a Charter right (Beatty 1990). In part, this may be a hangover from the days of parliamentary supremacy. Along this line, the mere fact that distribution provisions were achieved through a constitutional amendment may be sufficient testament to their importance.

In order to meet a demand for tangible evidence to justify the objectives of distributional departures from equal population standards as "pressing and substantial," the federal government could adduce historical evidence about the legislative history of provisions such as the senatorial minimum and the representation of the territories. Moreover, any social science data demonstrating servicing problems in the territories and the need to ensure regional representation in the House of Commons in light of the Senate's failure would be most relevant. The fact that such data may be somewhat speculative and impressionistic does not take away from their potential importance. The Supreme Court has already held that courts should be relatively deferential when the legislature's choice of objectives is based on social science data, which

by their nature will be somewhat inconclusive. In upholding restrictions on advertising aimed at people under 13 years of age in *Irwin Toy* (1989, 623), the Court stated that all that is required is for the legislature to make "a reasonable assessment" as to where to draw the line, "especially if that assessment involves weighing conflicting scientific evidence and allocating scarce resources." Thus, the courts are not likely to overrule the choice of which provinces and territories need special protection.

The Saskatchewan Court of Appeal's approach to the first stage of the *Oakes* analysis was likely tied up with its scepticism about a statutory allocation of a majority of ridings to rural interests. The Court of Appeal did accept the need for departures from equal population standards in order to guarantee two ridings in the north, and it did so in the absence of specific evidence about the geographic and regional justifications for such a measure. Likewise, both the regional representation and geographic factors which lie behind the senatorial minimum, "grandfather" and territorial provisions were recognized as "pressing and substantial" objectives important enough to limit Charter rights in *Dixon* (1989a, 271).

The next question will be whether these important objectives are achieved in a proportionate manner that strikes the appropriate balance between the objectives and the Charter rights. The measures used to promote the regional and geographical objectives must be carefully designed to achieve these objectives and must not be irrational or arbitrary. The senatorial minimum would seem to fit this requirement with regard to ensuring regional representation, because it ties the number of seats in the House of Commons to those in a Senate designed with the purpose (if not the effect) of protecting regional interests. The "grandfather" clause of section 51 is more questionable, because it operates to guarantee all provinces, not only the least populous, that they not lose seats. For example, it has been estimated that because of population fluctuations, seven provinces will benefit from this provision as of the 1991 census (Courtney 1988, 687). It can be argued that this provision operates in an unfair and arbitrary manner because it can protect provinces such as Quebec which already have a strong regional representation in the House of Commons. However, the Supreme Court has stated that it will not demand precision when the legislature is allocating scarce resources among competing groups (Irwin Toy 1989, 623; McKinney 1990, 651) and this could support a more deferential attitude toward the overinclusiveness of this form of allocating members among the provinces.

The next component of the proportionality test has been by far the most rigorous. It poses the question of whether even rational measures

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"impair 'as little as possible' the right or freedom in question" (Oakes 1986). This raises the question of whether regional representation of less populous provinces and territories can be achieved through alternatives that better respect Charter standards of equality of voting power. Given that representation in Canadian democracy primarily takes place in the elected House, it can be argued that the current distribution of seats does achieve the objective of regional representation in a way that infringes Charter rights "as little as possible." It is possible, however, to point to alternative means to ensure regional representation that may not entail violation of Charter voting rights. For example, the Senate could be reformed to guarantee democratic regional representation. Nevertheless, the Court is likely to be sensitive to the reality that although this hypothetical form of regional representation may violate the Charter right to vote in elections of members of the House of Commons less, to require it would demand more than can reasonably be expected of Parliament. In Edwards Books (1986, 51 [D.L.R.]) Chief Justice Dickson stated that under section 1 "courts are not called upon to substitute judicial opinions for legislative ones as to the place at which to draw a precise line"; and in Irwin Toy (1989, 623) the Court stated that when the legislature is making distributive choices among competing groups, all that is required is a reasonable basis for their opinion that they have selected the option which infringes the Charter right as little as possible. Given that possible alternatives would be difficult to implement, the courts may well conclude that Parliament has made a reasonable choice in bolstering regional representation, in the House of Commons, of provinces and territories with small and declining populations.

The geographic justification for current distributions may be somewhat more problematic. In the *Saskatchewan Districting Reference*, the Court of Appeal stated that while some "reasonable consideration of valid geographic, regional and other relevant matters" could be allowed, "speaking generally, effective representation can be nurtured by other, non-infringing and equally effective methods. For example, Members of the Legislative Assembly who represent larger geographic areas might be provided with additional travel allowances, support staff and 'up-to-date' communication services" (*Saskatchewan Districting Reference* 1991, 480). The sustainability of servicing objectives under section 1 of the Charter will be discussed in the districting portion of this study, but it is important to note that after expressing the view that reasonable alternatives existed, the Saskatchewan Court of Appeal went on to hold that less populous ridings were justified in Northern Saskatchewan and that "[t]he

exigencies of geography, very sparse population, transportation and communication warrant deviation from the ideal" (ibid., 481). Similar conclusions would suggest that the provision of three members for the territories is a proportionate means to secure quality of services in the territories.

The third component of the proportionality test balances the severity of the effects on those whose Charter rights are violated against the importance of the governmental objective. As Chief Justice Dickson explained in Oakes: "Some limits on rights and freedoms protected by the Charter will be more serious than others in terms of the nature of the right or freedom violated, the extent of the violation, and the degree to which the measures which impose the limit trench upon the integral principles of a free and democratic society" (Oakes 1986, 139–40). This balancing test requires courts to judge the severity of a violation of the right to vote or the right to equality (Keegstra 1990). Given that those in the provinces disadvantaged under present distributions can still exercise a meaningful franchise and in many cases are represented by large contingents of MPs, the infringement of their rights is relatively minor. In the distribution context, courts may well conclude that any violation of Charter rights is relatively minor while the objective of regional representation achieved is quite important, especially if it protects those Canadians who would otherwise be disadvantaged in the political process.

In short, it is likely that distribution of seats in the House of Commons between the provinces and territories is not susceptible to Charter review. Following the logic of the Supreme Court's decision in the Separate Schools Reference, courts are likely to conclude that Charter standards of equality of voting power cannot be used to nullify other parts of the Constitution which mandate departures from such principles. Even if the Charter can be applied to present distributions, strong arguments can be made that they do not infringe standards of relative equality of voting power in section 3 of the Charter and that they do not deny those in the more populous provinces equal benefit of the law with discrimination. Even if present distributions do violate section 3 and/or section 15 of the Charter, the government may be able to justify such violations as reasonable limits on Charter rights in order to pursue the important objective of ensuring regional representation in the House of Commons. Courts are likely to defer under section 1 to attempts to distribute the limited resource of seats in the House of Commons in order to benefit less populous and politically vulnerable provinces and territories. Holding present distribution provisions up to the Charter is more than an academic exercise; it demonstrates the

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possibility of reconciling Charter standards with Canadian traditions of departing from strict equal population standards.

#### **Remedies for Present Distributions**

Another way of re-enforcing the conclusion that present distributions do not infringe the Charter is to take seriously the old common law adage "that it is a vain thing to imagine a right without a remedy" (*Ashby* 1703) and to ask what would be the appropriate remedy if a court did find that they violated the Charter. The fact that a right to distribution on the strict basis of population would probably be a right for which no court could supply an effective remedy underlines the implausibility of concluding that present distribution provisions are subject to or violate the Charter.

If a court concluded that the senatorial minimum provision in section 51A of the Constitution Act, 1867, violated equality of voting power guaranteed under the Charter it could probably not by itself devise a remedy. The court would be faced with the fact that under section 41(b) of the Constitution Act, 1982, an amendment to "the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force" requires resolutions from the House of Commons and Senate and the legislative assembly of each province. If it followed the constitutional amending formula, the court would be in a position where the enforcement of Charter rights would depend on the cooperation of all 11 legislatures. In a leading constitutional remedies case, Reference re Language Rights under the Manitoba Act, 1870 (Manitoba Language Reference), the Supreme Court refused to adopt a remedial course that "would rely on a future and uncertain event" or "would make the executive branch of the federal government, rather than the courts, the guarantor of constitutionally entrenched language rights" (Manitoba Language Reference 1985, 25-26 [D.L.R.]). Reliance on the cooperation of all 11 legislatures would be no less problematic.

If the "grandfather" provisions of section 51 were found to violate the Charter, it is doubtful that on its own authority a court would devise a distribution formula on the strict basis of population. As in the districting context, courts would be reluctant to devise their own formula because that would force them into what they perceive as the legislative arena because they would have to select from a range of constitutionally permissible options (McLachlin 1990). Even if a court were prepared to do this, such an order might constitute an amendment to "the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada" and as

such would require use of the general amending formula under section 42(1)(a) of the *Constitution Act*, 1982. This principle has been interpreted in *Campbell* as a modified population formula which makes special allowance for the less populous provinces and territories. Once again, enforcement of this Charter right would depend on the cooperation of at least eight legislatures, and on the future and uncertain event of ratification. It is possible that courts might conclude that they were not bound by the provisions of the amending formula and that they could declare sections 51 and 51A to be of no force and effect. This, however, would only create a paralyzing constitutional vacuum which would still require the cooperation of legislatures to address by way of constitutional amendment.

The remedial difficulties of enforcing a strict equal population standard in the distribution context only underscore the fact that deviations from such a standard should be accepted as a legitimate part of the Canadian Constitution. It is likely that as part of the Constitution, the distribution provisions are not susceptible to Charter review. Even if they were, strong arguments can be made that the Charter can tolerate such deviations from a strict "one person, one vote" standard.

# DISTRICTING OF RIDINGS IN THE HOUSE OF COMMONS WITHIN A PROVINCE OR TERRITORY

## **The Districting Context**

Those who have created Canada's electoral maps have always faced the challenge of the country's vast area and concentrated population. This has produced the fundamental dilemma of how large in area a riding must be in order to have an acceptable population level in comparison to ridings in the more densely populated southern regions of the country (Courtney 1988, 682). This remains a fact of our geography that the Charter cannot change. It raises a multiplicity of concerns, including the adequate servicing of geographically large ridings and the need to represent remote regions of provinces. Another important factor in districting has been a traditional concern that ridings reflect a community of interest and identity. This concept can encompass many concerns, including the historical pattern of a riding, respect for municipal and natural boundaries, economic interests and local linguistic and ethnic communities (Stewart 1990, 359). Predictions about future population growth have also been a concern in districting. Finally, it cannot be denied that, historically, partisan political advantage has been a consideration; but that concern is now fortunately moot, given the dominant role played in the federal districting process by independent boundary commissions (Carty 1985).

Since 1964, districting within a province has been governed by the terms of the *Electoral Boundaries Readjustment Act*, which provides for independent electoral boundary commissions for each province and the Northwest Territories to hold hearings and devise electoral boundaries. The independent nature of these commissions has been praised as a means of preventing the appearance or reality of partisan political considerations from influencing districting decisions (Carty 1985); but their decentralized and independent nature has also been criticized for introducing arbitrary interprovincial divergences in districting (Courtney 1988).

Section 15(1)(a) of the Electoral Boundaries Readjustment Act instructs the 11 independent commissions that "the division of the province into electoral districts and the description of the boundaries thereof shall proceed on the basis that the population of each electoral district in the province as a result thereof shall as close as reasonably possible correspond to the electoral quota for the province," which is determined by a population-based formula subject to the senatorial minimum and "grandfather" provisions examined above. Section 15(1)(b) of the Act then provides that the commissions "shall consider ... in determining reasonable electoral district boundaries: ... the community of interest or community of identity in or the historical pattern of an electoral district ... "; and the need to maintain "a manageable geographic size for districts in sparsely populated, rural or northern regions of the province." Section 15(2) of the Act provides that the commissions may depart from the rule in section 15(1)(a) of corresponding as closely as is reasonably possible to the provincial quotient

in any case where the commission considers it necessary or desirable to depart therefrom

- (a) in order to respect the community of interest or community of identity in or the historical pattern of an electoral district in the province, or
- (b) in order to maintain a manageable geographic size for districts in sparsely populated, rural or northern regions of the province,

but, in departing from the application of the rule set out in paragraph (1)(a), the commission shall make every effort to ensure that, except in circumstances viewed by the commission as being extraordinary, the population of each electoral district in the province remains within twenty-five per cent more or twenty-five per cent less of the electoral quota for the province.

#### DRAWING THE MAP

This latter "extraordinary circumstances" clause was added in 1986, in large part in response to parliamentary concern that northern and remote ridings would become geographically unmanageable. At that time, the House Leader explained that the powers would be used "to protect an historical community of interest or to limit constituencies to a manageable geographic size" and that "The relative imbalances which exist today and have long been accepted as necessary compromises on the principle of representation by population will remain ... In a Parliament with only one elected house, our system has come to recognize the need of finding ways of ensuring adequate regional representation in the elected body" (Canada, House of Commons 1985).

In the 1987 boundary revisions, this power to depart from the 25% deviation limit was used five times, based on the 1981 census data (Courtney 1988; Sancton 1990). In Quebec the power was used to create ridings in the regions of Gaspé and Îles de la Madeleine. In Ontario, this power was used to limit the geographic size of the northern riding of Timiskaming. Its most extensive use was in Newfoundland, where a riding in the distinct region of Labrador had a population 61.4% below the provincial quotient while, perhaps in compensation, an urban riding in St John's had a population more than 25% above the provincial quotient.

More recent data collected in appendix A suggest that the electoral boundaries set in the 1987 revisions constitute a much more frequent departure from the 25% deviation standard if more recent measures of population and voters are used. When present federal ridings are examined on the basis of the 1986 census of residents, 21 of the 292 ridings (7.1%) depart from their provincial quotient by more than 25%. If the 1988 enumeration of voters is used, 36 out of 292 ridings depart from the provincial quotient by more than 25%. The latter figure is especially significant; it indicates that 12.3% of ridings involve departures over the 25% deviation limit as measured by the most recent enumeration. As will be discussed below, enumeration data may be a better indicator than census data in determining if an electoral map meets constitutional standards of equality of voting power. A significant proportion of the above deviations may be attributable to population growth since the 1981 census and as such may be attributed to practical difficulties in devising districts on a periodic basis. Nevertheless, it is important to underline how often present federal ridings in effect depart from an already generous 25% departure standard. To keep matters in perspective, however, it should be recalled that even Labrador - the most extraordinary of the federal extraordinary circumstances ridings – has a voter population comparable to those of the three ridings in the

Northwest and Yukon territories as prescribed under section 51(2) of the *Constitution Act*, 1867.9

### The Applicability of the Charter to Districting Issues

The applicability of the Charter to districting practices raises very different issues from the applicability of the Charter to the distribution of seats in the House of Commons. As has been discussed, distribution of seats between the provinces and territories is prescribed in the Constitution, whereas districting practices are governed by the terms of a statute, the *Electoral Boundaries Readjustment Act*. Although the Supreme Court has stated that the Charter should not be used to challenge other parts of the Constitution (*Separate Schools Reference* 1987), it has been firm in applying the Charter to all exercises of statutory and executive authority (*Operation Dismantle* 1985).

The argument that the Charter should not be applied to districting decisions revolves around the proposition that districting raises nonjusticiable issues that are best left to elected branches of government because of their complex and politically sensitive nature. Until the 1960s, American courts believed that the judiciary should defer to the political branches of government on sensitive matters such as districting, and also that courts lacked standards to judge the balancing of factors that are made when drawing electoral boundaries. In 1946, for example, the United States Supreme Court decided that a challenge to a state's apportionment of congressional electoral districts raised issues of "a peculiarly political nature and therefore not meet for judicial determination" (Colegrove 1946, 552). Justice Frankfurter concluded this judgement with the famous statement: "Courts ought not to enter this political thicket" (ibid., 556). This view was repudiated in the 1962 case of Baker v. Carr, in which the Court held that constitutional standards could be applied to apportionment questions. Within two years of this decision, that Court had devised a strict "one person, one vote" standard (Reynolds 1964). Whatever its philosophical appeal, this standard was attractive to the Court because it provided a simple and objective formula for measuring the government's balancing of interests and devising judicial remedies (Ely 1980, 124). <sup>10</sup> In short order, American courts had asserted a responsibility to scrutinize apportionment decisions and, in the quest for manageable standards of review, had devised a constitutional standard which left no room to defer to the legislature's balancing of interests.

The American experience is unlikely to be duplicated in Canada for several reasons. First, Canadian courts have already, in the early stage of the development of the Charter, rejected the notion that some

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subject areas are immune from Charter review because of their sensitive and political nature. In both Dixon and the Saskatchewan Districting Reference, courts have held that they have an obligation to scrutinize districting schemes to determine if they violate Charter rights. 11 At the same time, however, Canadian courts have stressed that in exercising their responsibilities of judicial review, they will not attempt to judge the wisdom of governmental policies. In the Operation Dismantle case the Supreme Court held that the standards of the Charter could be applied to a governmental decision to test cruise missiles. Justice Wilson, holding that there was no Charter violation, drew a sharp distinction between judging the wisdom of the executive's exercise of its defence powers and deciding whether the consequence of such an exercise of governmental powers violated a person's rights under the Charter (Operation Dismantle 1985, 504). In Dixon (1989a, 278) Justice McLachlin cited the above distinction with approval and, after asserting an obligation to determine if districting violated the Charter, was quite deferential toward the government, both in defining the content of voting rights and in devising the appropriate and just remedy (Roach 1990). Thus, although Canadian courts have reached the stage of Baker v. Carr in determining that districting presents justiciable issues, they have defined their task of judicial review in more limited terms than the American courts have done.

Although Canadian courts are bold in applying the Charter to all areas of governmental policy making, they have several areas of flexibility that allow them to defer to the government's balancing of interests without abdicating their responsibility to determine if Charter rights have been violated. Unlike the situation in the United States, Canadian courts can determine that although voting rights have been violated, the violation has been justified by the government as a reasonable limit in a free and democratic society. Thus, Canadian courts can tolerate deviations from "one person, one vote" without necessarily having to draw arbitrary limits. In addition, Canadian courts have a wide discretion at the remedial stage to determine what remedy they consider to be appropriate and just under section 24(1) of the Charter. The remedial option of giving unconstitutional electoral boundaries temporary force until the legislature responds with reform legislation allows courts to reject one districting scheme without creating their own (Dixon 1989a). This in turn allows the courts to work in partnership with governments by giving them the opportunity to select the best of the constitutionally permissible options (McLachlin 1990). For these reasons, it appears unlikely that Canadian courts will follow the American example of a wide swing from judicial abdication to judicial dictation over districting.

## The Right to Vote and Districting

## Districting Based on Census and Enumeration Populations

Section 3 of the Charter refers in its heading to "democratic rights of citizens" and states that "every citizen of Canada has the right to vote." It does not refer to the democratic rights of everyone residing in Canada but rather to a subgroup of the total population: citizens of Canada. Given the wording of section 3, it is necessary as a preliminary matter to determine if districting should continue to be done on the basis of census data measuring permanent residents or on the basis of enumeration data measuring qualified voters.

In Dixon, Justice McLachlin measured whether British Columbia's districting practices lived up to Charter standards on the basis of both census and enumeration data (Dixon 1989a, 254, 267-68, 284). The use of both sets of data reflects her belief that population-based and voterbased standards are closely related. "The concept of representation by population is one of the most fundamental democratic guarantees. And the notion of equality of voting power is fundamental to representation by population" (ibid., 259). Although Justice McLachlin expressed the general view that an equal population standard would be compatible with one aimed at equality of voters, the bulk of her judgement uses the latter as the constitutional standard. For example, section 3 is interpreted as primarily concerned with "the value of a vote" or "equality of voting power" or "voter parity" (Dixon 1989a, 259, 260, 264). The Saskatchewan Court of Appeal in its Districting Reference referred exclusively to the rights of voters, equality of voting power and electoral populations based on voters lists. In part this is related to Saskatchewan's use of voter population as the standard in its Electoral Boundaries Commission Act, but the Court of Appeal also justified its reliance on voter population on a broader basis when it stated:

Amongst the basic aims ... of legislative apportionment or distribution schemes must be the fair and effective representation of all citizens. For this reason the controlling and dominant consideration in drawing electoral constituency boundaries must be voter population in the province. Hence the Court must hold as a starting point that seats in the Legislative Assembly should be apportioned to constituencies of substantially equal voter population. This is because most citizens can participate only as qualified voters through the election of legislators to represent them. (Saskatchewan Districting Reference 1991, 463)

The emphasis on voter as opposed to census populations fits well with the language and purpose of section 3, which protects democratic rights

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through the right of citizens to vote and suggests that districting decisions (and to the extent that the Charter governs them, distribution decisions) made on the basis of a voters list would well satisfy the requirements of section 3 of the Charter.

Although use of enumeration as opposed to census data is congruent with the wording and purpose of section 3 of the Charter, it has some potential shortcomings. Although section 3 guarantees the right to vote only to "citizens," it does provide a standard of voting rights that is independent and superior to the statutory standards which determine who is placed on the voters list. Thus, districting on the basis of enumeration data must come from an otherwise constitutional voters list. Moreover, districting must meet the standards not only of section 3 but of other Charter rights, including section 15. Unlike section 3, which extends the right to vote only to citizens, section 15 provides equality rights to every "individual." In fact, the leading section 15 case holds that noncitizens are protected from discrimination under its broad protections (Andrews 1989). Given this, it is possible that districting on the basis of a voters list would deny equal protection of the law to those individuals protected under section 15 who either are not eligible for the voters list or are not actually placed on that list. In terms of section 15 jurisprudence, this argument is the strongest in those cases where the voters list discriminates in purpose or effect against vulnerable minorities such as young persons, those with mental or physical disabilities, various racial or ethnic minorities (all enumerated grounds of discrimination in section 15), as well as noncitizens, linguistic minorities, the homeless and those confined in custodial institutions (all grounds likely to be analogous to the enumerated grounds).

Whatever the merits of direct section 15 challenges to restrictions on the voters list, <sup>12</sup> it should be noted that the effects of any discrimination suffered by those not on the voters list in the districting context would be indirect and relatively minor. In most cases, it is not immediately clear how individuals excluded from the voters list would benefit if their numbers counted in districting. Nevertheless, it is possible that districting could have discriminatory effects with respect to ridings that have a disproportionate number of young people or residents of custodial institutions.

In the end, however, courts are likely to be sympathetic to attempts to correlate the districting process to the rights of citizens to vote under section 3. In the *Dixon* decision, Justice McLachlin even suggested that section 3 enjoys some type of paramountcy over other Charter rights in the voting rights context: "It is difficult to accept ... that the framers of the Charter, having set out what they conceived to be democratic

rights of the people of this country in ss. 3 to 5, intended that the rights thus conferred could be added to or subtracted from by what they laid down in connection with legal rights or equality rights" (*Dixon* 1989a, 269). In short, the move from a census-based to a voter-based districting process would be in accord with present interpretations of the right to vote in section 3 of the Charter, but it may present some section 15 problems.

## The Content of Right to Vote

Section 3 of the Charter has been interpreted as requiring various degrees of equality of voting power. As discussed in the distribution part of this study, the concern with the value of a vote is significant because it suggests that courts may view equal treatment of voters as an absolute good under section 3, whereas under section 15 they would be concerned not that treatment was unequal in a formal sense but only if it had the potential to result in discrimination in a broader political and social sense. Thus, arguments that deviations from a "one person, one vote" standard are necessary, in order to ensure representation and quality of service from disadvantaged regions, may not in themselves be decisive under section 3. The concern with the value of a vote may mean that constitutional scrutiny of districting will be conducted on an individualistic and mechanistic basis of calculating and comparing voter populations in various districts, rather than by assessing the quality of representation in the context of which interests in a "firstby-the-post" parliamentary system based on geographic ridings actually receive representation.

It is important to recall at this juncture that some of the largest deviations from equality of voting power in the federal electoral map are mandated by the requirements of sections 51 and 51A of the *Constitution Act*, 1867, and as such may be immune from Charter scrutiny. For example, the three ridings contained in the Northwest and Yukon territories have only between 11 392 and 18 721 voters. Likewise, the four ridings that the senatorial minimum provides for Prince Edward Island have between 20 458 and 24 252 voters and the 10 ridings in New Brunswick have between 38 670 and 65 269 voters (appendix A, 1988 enumeration). Thus, an important difference between the provincial electoral maps held to violate the Charter in British Columbia and Saskatchewan and the federal electoral map is that some of the most extreme deviations from equality of voting power in the federal system are specifically mandated by provisions of the Constitution of Canada.

In evaluating the possible impact of the *Dixon* and *Saskatchewan Districting Reference* decisions, it is important to bear in mind some

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other important differences between the provincial electoral systems held unconstitutional in those cases and the current federal system. Although constitutional rulings are intended to establish general principles of law, it is important never to forget the context in which they were formulated and applied.

The British Columbia electoral map which Justice McLachlin found wanting in Dixon was unique in several respects. British Columbia had refused until 1984 to follow the practice of most Canadian jurisdictions of establishing an independent boundary commission. A 1978 redistribution was met with suspicions of partisan gerrymandering, the most notorious being the controversy about "Gracie's Finger," an anomaly in the riding of Social Credit MLA, Grace McCarthy. The British Columbia legislation established, in effect, seven different population quotients for determining electoral boundaries: it established distinctions between all ridings on the mainland and those on Vancouver Island, and within these two larger groups between ridings classified as remote, interior coastal, urban/rural and urban. Moreover, the British Columbia legislation set no tolerance for departures from the provincial quotient and, as the Fisher royal commission noted, 19 of 52 ridings had deviations beyond even a generous 25 percent tolerance limit (BC, Royal Commission 1988, 4). On the basis of the 1986 census data, more than half of the ridings (30 of 52) had deviations over 15 percent of the electoral quotient (Dixon 1989a, 284-85). In short, the British Columbia electoral districts that were found unconstitutional in Dixon differed significantly from those in the federal system, both in their amount of deviation from equal population standards and in the procedures through which they were produced.

The Saskatchewan electoral legislation differed from that of British Columbia because it provided deviation limits of 25 percent between "southern" constituencies and 50 percent between the two northern constituencies (Saskatchewan, *Electoral Boundaries Commission Act*, ss. 2, 20). On the basis of 1986 enumeration data, only two of 66 ridings had a population deviation over 25 percent and those ridings were the northern ridings of Athabasca and Cumberland which the Court of Appeal held were justified under section 1! Still, one-third of the ridings had deviations over 15 percent from the 1986 voter-based quotient. The greater procedural and substantive respect for equality of voting power in Saskatchewan as compared to British Columbia reflects the stricter approach toward section 3 taken in the *Saskatchewan Districting Reference*. Despite this difference, it would be a mistake to underemphasize the differences between the Saskatchewan and federal systems.

Districting under the Saskatchewan legislation was subject to what the Court of Appeal criticized as an "arbitrary," "statutory strangle-hold" – that the electoral map must consist of 29 urban constituencies, 35 rural constituencies and two northern constituencies. The Court of Appeal concluded that this statutory allocation (which included the definition of the urban constituencies by municipal boundaries) prevented the boundary commission "from effectively applying the concept of relative voting power. Obviously that robs the commission of its ability to make independent and unshackled recommendations with respect to the boundaries of the 66 constituencies. It is foreclosed from giving proper effect to the concept of equality of voting power because of this arbitrary division of the province into a fixed number of rural and urban seats" (Saskatchewan Districting Reference 1991, 467).

The Saskatchewan Act was understood by the Court of Appeal in light of its predecessor legislation, which did not set any statutory quota on rural and urban ridings but, rather, instructed that they should "correspond as nearly as possible" to a quotient established on equal population standards and that "in no case shall the population of any constituency in the province ... depart from the constituency quotient to a greater extent than fifteen per cent more or fifteen per cent less." The 1989 Saskatchewan legislation was perceived by some as a partisan attempt to capitalize on the governing party's electoral strengths in rural ridings in the 1986 provincial election. Thus, as in *Dixon*, the Saskatchewan system was somewhat suspicious because of a recent amendment guaranteeing rural residents a majority in the legislature regardless of their population, and because of concerns about the process which produced the boundaries.

Most importantly for the purposes of this study, the Court of Appeal noted that the Saskatchewan legislation "stands in marked contrast to the controlling provisions" of the federal *Electoral Boundaries Readjustment Act*, which instruct boundary commissions to adhere to the electoral quotient of the province "as close as reasonably possible." The Court of Appeal noted with approval that the last federal boundary commission was able to district the 14 ridings of that province within 5 percent of the provincial quotient (*Saskatchewan Districting Reference* 1991, 464–66). Before these statements are prematurely interpreted as placing the constitutional seal of approval on the present federal system, it is necessary to examine both that system and the Saskatchewan experience within it more closely.

Several distinct issues arise when considering the constitutionality of the present federal districting system. One is the 25 percent deviation limit which binds the decisions of the independent boundary

commissions except when they make a decision to depart from it in "extraordinary circumstances." In *Dixon* (1989a, 266–67), Justice McLachlin stated that a deviation limit is important to ensure that population is "the dominant consideration in drawing electoral boundaries" and "to set limits beyond which [equality of voting power] cannot be eroded by giving preferences to other factors and considerations." She went on to note, however, that a deviation limit "is not alone sufficient, particularly if the outside limit is relatively generous" because it will be necessary to demonstrate that every deviation from an equal population standard is justified. By this she presumably means justified on a riding-by-riding basis, because she criticized British Columbia's use of differential geographic quotients which operated "quite apart from any particular regional or geographic considerations touching particular ridings" (ibid., 269).

Justice McLachlin's two-step test has several consequences. It means that a relatively generous deviation standard, such as the 25 percent standard in both the federal legislation and the subsequently enacted British Columbia legislation, may be tolerated in order to accommodate compelling cases for departures. A generous standard can accommodate deserving cases and the risk of abuse is lessened because, under the two-step *Dixon* test, every deviation within the generous limit must also be justified. If the courts were to defer to whatever decision the boundaries commissions made within the tolerance limit, the case for adopting a lower limit as a prophylactic standard against unjustified departures would be stronger. Under the *Dixon* test, however, courts will be sensitive to abuses of a generous departure standard in nondeserving cases.

Is an adjustment of the present 25% deviation standard required by the Charter? In her Dixon judgement, Justice McLachlin mentions a 10% deviation limit established in Australia. She also heard evidence that a 5% tolerance limit is used in New Zealand. The 25% standard in the *Electoral Boundaries Readjustment Act* is mentioned as one that "is relatively generous." The effect of the 25% deviation can be demonstrated by a simple example. If a provincial quotient was set at 100 000 voters, a 25% deviation would allow a range of between 75 000 and 125 000 voters in the least and most populous ridings. The divergence between the populations is actually 66%, with 100 votes in the least-populous district being "worth" 167 votes in the most populous. Despite its generous nature, Justice McLachlin approved of a 25% deviation limit recommended by the Fisher Royal Commission on Electoral Boundaries for British Columbia, stating that such a "maximum deviation from the electoral quota appears to be within a tolerable limit,

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given the vast and sparsely populated regions to be found in British Columbia" (*Dixon* 1989a, 283).

It may be difficult for a court which accepts relative as opposed to absolute equality of voting power to hold, as a matter of law, that the present 25% limit in the federal system violates section 3 of the Charter. Once a court has accepted the principle of relative as opposed to absolute equality of voting power, it is unlikely to be eager to engage in fine tuning or line drawing. Nevertheless, it is likely that Justice McLachlin's approval of that generous standard means that its function is to accommodate the most compelling cases for deviations subject to special justification under section 1 in extraordinary cases. A strong case can be made for lowering a 25% limit, if it is to function as an approved range for districting decisions. The present Act is ambiguous as to whether the 25% standard functions as a range or a limit. The requirement that commissions shall devise ridings "as close as reasonably possible" to the provincial quotient suggests that it is a limit. On the other hand, the requirement that commissions shall consider nonpopulation factors and their ability to depart from the 25% standard suggests it only operates as an approved range for districting decisions. If the deviation standard is to be a range, 10-15% may be more appropriate, subject to departures in cases where compelling demands of geography or regional representation exist.

The Saskatchewan Court of Appeal's understanding of the requirement of equality of voting power under section 3 of the Charter challenges the very existence of a deviation limit authorized by legislation. Although the Saskatchewan Court of Appeal stressed that achieving "absolute" equality with "mathematical precision" is a practical impossibility because of inherent limitations in the enumeration and election processes of a parliamentary democracy, the court did suggest that the legislature is under a section 3 obligation "to strive to make each citizen's portion of sovereign power equal." Although the Court of Appeal mentioned with approval a 5 percent deviation range from the provincial quotient achieved by the most recent federal boundary commission for Saskatchewan, this deviation falls more into the category of inherent limitation on attaining ridings with equal numbers of voters, including perhaps predictions about future population growth. The Court of Appeal refused to set any tolerance zone, relying on the good faith of governments to abide by the "one person, one vote" standard it sees in section 3. It is likely that the justices would demand a similar approach from Parliament. Even a low deviation tolerance such as 10-15 percent would, whatever the eventual case for its section 1 justification, be one that does not "interfere as little as possible with the

controlling principle of 'one person-one vote'" (Saskatchewan Districting Reference 1991, 463) and as such would violate their understanding of section 3.

Courts will not only be concerned with whatever deviation standard is used, but also with how boundary commissions exercise their powers to make departures from the provincial quotient within its range. Justice McLachlin stated in *Dixon* that "only such deviations from the ideal of equal representation as are capable of justification on the basis of some other valid factor may be admitted" (*Dixon* 1989a, 267). Are the factors listed in the *Electoral Boundaries Readjustment Act* as reasons for departing from the provincial quotient likely to be considered valid factors which contribute to the better government of the populace as a whole? The grounds listed in section 15 of the Act for justifying departures from the provincial quotient are as follows: "the community of interest or community of identity ... of an electoral district in the province"; "the historical pattern of an electoral district in the province"; and the need "to maintain a manageable geographic size for districts in sparsely populated, rural or northern regions of the province."

Justice McLachlin did not mention whether "community of interest and community of identity" would be valid factors, but she did single out "regional interests meriting representation" and "touching particular ridings." The fact that she did not embrace the broad concept of community of interest or community of identity is of limited significance, because no attempt was made in Dixon to define exhaustively those factors which may justify departures from the provincial quotient. Taking the regional and geographical factors that Justice McLachlin singles out, it is arguable that her understanding of these factors is broad enough to include many of the diverse considerations that go into determining what constitutes a community with a sufficient sense of common interest and identity to merit representation in a riding. There is evidence that Justice McLachlin meant to define regional and geographic considerations broadly. For example, she states that all the factors that the attorney general of British Columbia cited as justifying the giving of greater weight to rural votes (special interests of rural areas, difficulties of communicating with rural electors, wider "ombudsman" role of the rural member, lack of access to media and limited resources in rural areas) relate to either regional interests or geographical concerns (ibid., 255).

Nevertheless, Justice McLachlin did not approve of some of the considerations such as stability of districts and respect for other political boundaries that have often been considered in drawing electoral boundaries. In fact, she suggests that one factor that is specifically listed

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in the *Electoral Boundaries Readjustment Act*, the historical pattern of a riding, cannot by itself justify ridings with "anomalous populations" (ibid., 268). Thus, not all the criteria listed in the federal Act may qualify as a sufficient reason for departing from a provincial quotient even under the *Dixon* approach of allowing some deviations as definitional limits on the section 3 right and not requiring justification under the more formulated and exacting section 1 test.

Not only must the criteria for deviations from an equal population standard be re-evaluated in light of the Charter, but so must the process through which the criteria are applied by the independent boundary commissions. Both Dixon and the Saskatchewan Districting Reference place a premium on the ability of boundary commissions and eventually governments to demonstrate that all deviations from an equal population standard will advance important values. The importance of the ability to articulate reasons for deviations is underlined by the fact that Justice McLachlin's final conclusion that the British Columbia boundaries violated section 3 relied in large part on her conclusion that deviations from equal population standards in several neighbouring ridings were "unexplained" (Dixon 1989a, 268-69). Likewise, even aside from the deficiencies it found in the allocation of ridings between urban and rural areas, the Saskatchewan Court of Appeal also noted deviations between neighbouring ridings within both urban and rural areas, and in the absence of a government explanation invalidated them as "unexplained" (Saskatchewan Districting Reference 1991, 473-74).

Although the federal districting process is in many ways less vulnerable to a Charter challenge than those in British Columbia and Saskatchewan, some problems do arise. If the Supreme Court of Canada accepts relative as opposed to absolute equality of voting power, it may be difficult for it to find that the generous 25 percent deviation limit is in itself a violation of the Charter. Despite this, courts are likely to be vigilant about how the power to make deviations from provincial quotients is exercised, requiring that every deviation be justified by objectives which relate at least to the better government of Canada and which perhaps, as will be explored later, are also "pressing and substantial" enough to justify limiting Charter rights under section 1. Although most of the factors contained in the federal Act as reasons for departing from the provincial quotient are of sufficient importance, the historical pattern of a riding and some aspects of community of identity and interest may not be.

# The Right to Equality and Districting

Section 15 of the Charter and the leading cases interpreting that section were analysed in the earlier part of this study dealing with distribution.

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For our purposes here, it is necessary to apply the reasoning of those cases to the questions of legal inequalities created in the districting process.

Do those who live in the more populous ridings have a valid claim under section 15 of the Charter that they have been denied equality under or before the law or the equal protection or benefit of the law with discrimination? To some extent, this discussion is academic, given that courts are likely to read a concern about equality of voting power into the substantive guarantee of the right to vote under section 3 of the Charter. Nevertheless, it is instructive to see what weight the section 15 claims of those in the more populous ridings would have under the Supreme Court's interpretation of equality rights. Comparing the sociological and group-based approach that the Supreme Court has used to interpret equality rights with the emphasis on formal equality or similar treatment under the "one person, one vote" principle helps reveal the latter's individualistic orientation.

The first step of a section 15 argument requires plaintiffs to identify a law that denies them equality before or under the law or the equal protection or benefit of the law. It could be argued that there is no law which infringes equality rights because the independent boundary commissions are under no legal obligation under the Electoral Boundaries Readjustment Act to depart from the provincial quotient. This argument is not likely to succeed because of the broad nature of the equality rights and the court's determination not to give them a narrow reading. As Justice McIntyre noted in the landmark Andrews case, all a plaintiff must demonstrate at this stage is that "he or she is not receiving equal treatment before and under the law or that the law has a differential impact on him or her in the protection or benefit accorded by law" (Andrews 1989, 182). Those who do not benefit from the nonpopulation criteria that commissions are required to consider under the Act – such as community of interest or identity and the geographic size of a riding - have a strong argument that they are not treated equally under the Act and do not receive its equal protection and benefit. It is not necessary to prove that the law was enacted with the purpose that they be disadvantaged; only that the operation of the law has that effect on them. The value of their vote is vulnerable to dilution on the basis of departures from the provincial quotient made under the criteria listed in sections 15(1)(b) and 15(2) of the Act.

The second and crucial step in a Charter equality rights argument is to determine if any of the broad equality rights have been denied "with discrimination." As we have seen, the Supreme Court has defined this term on an enumerated and analogous grounds basis so that it is necessary to demonstrate that the legal distinction discriminates on the

basis of "personal characteristics" analogous to the grounds of discrimination enumerated in section 15 (*Andrews* 1989; *Turpin* 1989; *R. v. S.(S.)* 1990). Thus, the focus would be on disadvantages which make the victims vulnerable not only to the specific legal disadvantage imposed by the impugned law, but also to prejudice in a wider political, social and legal sense.

It is possible for those who have the value of their vote diminished by districting decisions to argue that they have suffered discrimination on the basis of their place of residence. Regardless of the thorny issue of whether a place of residence can constitute a personal characteristic, the problem with such a ground of discrimination is that it will often be difficult to prove vulnerability to discrimination in a broader sense. Residents of more populous ridings are disadvantaged in the sense that their votes have less of an impact on the election of a member than the votes of residents of less populous ridings, but, in the absence of other evidence of systemic political disadvantage, it would be difficult to show broader disadvantage or vulnerability to prejudice. If a court believed that the more populous ridings were constructed to contain political or other minorities, such individuals would have a plausible claim that they were vulnerable to widespread political and legal discrimination. I have suggested elsewhere that concerns about this sort of political discrimination may have influenced the judgement in Dixon, even though they were not articulated by Justice McLachlin (Roach 1990). Similarly, the Saskatchewan Districting Reference is characterized by a thorough suspicion toward a recent statutory allocation of a majority of the seats in the legislature to rural ridings which placed a "statutory stranglehold" on the representation of urban interests. It is doubtful, however, if any similar concerns could arise under the federal system, with its reliance on independent boundary commissions and with its statutory allocation of seats limited to the territories and, perhaps in the future, to a small number of other distinct and vulnerable regions.

Another ground of discrimination that could be advanced is that the distinctions in the federal Act favour those in sparsely populated, rural and northern ridings and disadvantage citizens living in urban or rapidly growing suburban ridings which on average have greater populations. Even if unequal treatment on the basis of living in an urban area is made out, however, it may not necessarily meet the Supreme Court's test for discrimination. As I have stated in the context of the *Dixon* decision:

To the extent that these under-represented constituencies come from urban and suburban as opposed to rural and remote regions it is an

open question whether they merit protection under s. 15 of the *Charter*. Those who live in cities are not obviously disadvantaged in participation in the political process as compared to those who live in more remote areas. Voters in Vancouver and Victoria have more immediate access to their members, government offices and the media than their rural and remote counterparts and this may compensate for the distinctions made to favour the latter ... By ... not holding that legal distinctions creating less populous rural and remote ridings were per se unconstitutional, Chief Justice McLachlin presciently cut a similar path to that which the Supreme Court of Canada had, at the time, yet to take in interpreting the equality rights. (Roach 1990, 92–93)

It should be noted, however, that the argument that urban voters are not vulnerable would be more difficult to make in the Saskatchewan context, because in Saskatchewan urban voters were placed in a minority by the statutory allocation of 29 ridings to urban voters while rural voters were guaranteed 35 ridings. Although urban residents are only barely a numerical minority in Saskatchewan and do not generally suffer prejudice, the Saskatchewan legislature placed them in the position of being a minority in the legislature and perhaps vulnerable to broader forms of political and legal discrimination.

In general, urban voters will have the benefit of proximity to their member and other political institutions. Despite this, they may suffer some disadvantages in servicing caused by the increased population of their ridings and the challenges presented by the increasingly heterogeneous urban populations of major Canadian cities. Members from cities such as Vancouver, Toronto and Montreal have constituents from many backgrounds. The constituents may speak many different languages and have a great need for their member to act as their "ombudsman" in their relations with the government. At the same time, however, it should not be forgotten that rural and especially remote ridings may also have diverse populations with particular servicing needs.

The susceptibility of urban as opposed to rural voters to discrimination under section 15 was tested in a recent case decided by the British Columbia Supreme Court. In that case, a person living in an urban riding challenged provisions of the *Canada Elections Act* on the basis that they discriminated against urban voters by denying them the right to vote if they were not on the official list of electors. Rural voters in similar circumstances could vote if a qualified voter vouched for them. Colutas J. noted that the legal distinctions infringed the plaintiff's equality rights but after examining the Supreme Court's decisions in *Andrews* and *Turpin* concluded that "The plaintiff in the case before me cannot be classified as a member of a 'discrete and insular minority.' The

impugned legislation does not distinguish the plaintiff from other persons on the basis of a personal characteristic which shares the similarities of historical, social, legal or political disadvantage as those enumerated in s. 15" (*Scott* 1990, 522). Even if the judge was prepared to accept living in an urban riding as a personal characteristic, a comparison of the political, legal and social position of urban voters in relation to rural voters throughout Canada would likely have resulted in the same conclusion that section 15 was not violated. Urban voters are not a disadvantaged group that should be protected under section 15 of the Charter.

Although the Supreme Court's interpretation of section 15 may prevent many of the inequalities in the districting process from being held to violate section 15, the enumerated and analogous grounds approach to this section does open up a new concern about the effect that districting decisions have on racial, religious, ethnic and linguistic minority groups. Districting decisions which dilute the value of a vote for those who come from residentially concentrated and politically cohesive minority groups may very well violate section 15. Such groups would be denied the equal benefit of the districting law and, unlike the case of urban voters, there would be discrimination on the basis of a personal characteristic that is enumerated in section 15 or analogous to those grounds. Such minorities may come from urban areas but they may also come from the North, where there are concentrated populations of Aboriginal peoples, and from some rural areas where distinct religious minorities reside.

There has been experience in the United States with the effect of districting decisions on the political power of minority groups. In Mobile v. Bolden (1980), the United States Supreme Court held that under the Equal Protection Clause of the American Bill of Rights an intent to discriminate must be shown before a districting scheme that splits the impact of minority votes is held to be unconstitutional. Such an onerous requirement of intent would be at odds with established Charter jurisprudence, which holds that effects as well as purposes may render government actions unconstitutional. The standard under section 15 of the Charter is closer to that under the United States Voting Rights Act, which prohibits districting that operates "in a manner which results in a denial or abridgement" of voting rights. Under this provision, the United States Supreme Court has decided that a minority aggrieved by a districting decision need only show a substantial difficulty in electing representatives of their choice and the existence of a significant voting bloc of the minority group (Thornburg). Dissenting American judges have stated that such a broad effects-based standard of discrimination, when applied to districting, creates "a right to a form of proportional representation in favor of all geographically and politically cohesive minority groups that are large enough to constitute majorities if concentrated within one or more single member districts" (*Thornburg* 1986, 2784). Some American commentators agree with this insight, but not with its premise that such protection of the political power of minorities is a bad thing (Low-Beer 1984). Given the Canadian understanding of equality rights, it is likely that the impact of districting on various minorities will soon emerge as an important component in the courts' supervision of districting.

American courts have recently expanded their concern beyond discriminatory effects suffered by racial and ethnic minorities to discriminatory effects suffered by political groups, including the major political parties (*Davis* 1986). As discussed above, it is possible that political minorities could find themselves in a position of systemic disadvantage; but it is unlikely, given the role of the independent boundary commissions in the federal system, that courts will find the claims of political groups disadvantaged by districting to be as compelling as those of racial, religious, ethnic and linguistic minorities.

In short, it is unlikely that those who do not receive the equal protection and benefit of the value of their vote will be able to launch a successful section 15 challenge on that basis alone. In addition, they will have to show that the unequal treatment makes them vulnerable to broader forms of discrimination. This will require a showing that they deserve protection under the Supreme Court's enumerated and analogous approach to the interpretation of equality rights. Those who suffer a legal disadvantage in the value of their vote on a random basis or on the basis that they live in an urban as opposed to a rural or remote environment will likely have difficulty demonstrating that they are vulnerable to broader forms of political or social discrimination. On the other hand, enumerated minorities or those analogous to them will have a much stronger section 15 case if they can demonstrate that a districting decision made under the powers conferred by the Electoral Boundaries Readjustment Act has the effect of denying them the value that their concentrated votes might otherwise have in electing members of their choice.

# **Section 1 Justifications for Present Districting**

There is an ambiguity in *Dixon* which suggests that the factors that justify departures from an equal population standard may not only have to meet a broad test of "contributing to better government of the populace as a whole" under section 3 but may also have to qualify as

"pressing and substantial" objectives which are implemented in a proportionate manner under section 1. The regional and geographic factors that are singled out in *Dixon* (1989a, 271) are mentioned as fulfilling both tests. Under the approach of the Saskatchewan Court of Appeal there is no ambiguity. Any deviation from a "one person, one vote" standard beyond the inherent limitations set by the timing of enumerations and elections must be justified under section 1. Thus, the question emerges whether the Supreme Court will accept some definitional limits on the right to vote or whether it will force all departures from a "one person, one vote" standard to meet the requirements of section 1.

In support of the definitional limits approach is the precedent of the treatment of equality rights. In support of reading section 3 broadly as guaranteeing "one person, one vote" and then limiting that right under section 1 is the treatment of freedom of expression as comprehending commercial expression and hate literature (Irwin Toy 1989; Keegstra 1990). Despite the interesting theoretical debate surrounding this question (Beatty 1990), there is good reason to believe that its resolution may be of little practical importance in the districting context. In Dixon, Justice McLachlin made it clear that the government would have the burden of justifying departures from equal population standards regardless of whether departures were evaluated under section 3 or section 1 (Roach 1990, 91-92). Justice McLachlin articulated a deferential standard under section 3 by stating that a court "ought not to interfere with the legislature's electoral map under s. 3 of the Charter unless it appears that reasonable persons applying the appropriate principles - equal voting power subject only to such limits as required by good government - could not have set the electoral boundaries as they exist" (Dixon 1989a, 271). The Supreme Court, however, is already using a similarly deferential approach under section 1, especially when dealing with Parliament's allocation of scarce resources between competing groups (Edwards Books 1986; Irwin Toy 1989; McKinney 1990).

It is fairly certain that the ability of commissions to depart from the generous 25 percent deviation limit will be held to violate even a standard of relative equality of voting power under section 3. Thus, at least some departures will have to be justified under section 1. The question then arises as to whether the 1986 amendment authorizing the boundary commissions to make departures beyond the 25 percent deviation standard in "extraordinary circumstances" can be justified under section 1.

An initial and perhaps fatal problem is the vague term of authorizing departures from the generous 25 percent deviation limit in "extraordinary circumstances." This standard may not even meet the

#### DRAWING THE MAP

initial threshold of being a limit prescribed by law. Although the law requires the circumstances to be "extraordinary," it does not define what circumstances are "extraordinary" or even relate such circumstances to concerns such as community of interest and identity and geographic size of ridings that are set out in the Act to guide deviations from the provincial quotient within the 25 percent limit. Given that statutory guidance has been provided for more limited incursions on equality of voting power, courts will find it difficult to understand why more major departures are left "unexplained," to borrow from the words of the Dixon judgement. In Irwin Toy (1989, 617), the Court held that to meet the initial section 1 criterion of being a limit "prescribed by law," the law itself must provide "intelligible standards" to govern the limits. Given the undefined nature of "extraordinary circumstances," it is difficult to see what the intelligible standards are that govern such departures, unless they are interpreted as relating to the criteria set out in the Act for departures within the 25 percent limit. The lack of standards becomes especially egregious because there is no limit on how much beyond 25 percent the boundary commissions may depart.

Even if the "extraordinary circumstances" clause was found to prescribe limits on Charter rights, its undefined nature would frustrate attempts to justify such limits under the *Oakes* test. For example, it would be difficult, if not impossible, for a court to decide whether the objectives pursued were "pressing and substantial" enough to justify the infringement of a Charter right. If the objectives cannot be identified, then it is impossible to assess whether the departures are rationally connected to the objectives, infringe the Charter right "as little as possible" and strike an appropriate balance. Section 1 analysis places a high value on clear articulation of the governmental objectives behind laws that violate Charter rights, and the undefined "extraordinary circumstances" clause fails miserably in this respect.

It can be argued that deviations beyond 25 percent of the provincial quotient constitute a gross violation of equality of voting power and should never be accepted. It is interesting to remember, however, that the deviations for all the federal "extraordinary circumstances" ridings except Labrador are not as extreme as the deviation that was accepted in the *Saskatchewan Districting Reference* under section 1 with respect to the northern riding of Athabasca. Moreover, even the least populous federal riding, Labrador, has census and voter populations that are generally greater than those found in the three ridings in the Yukon and the Northwest Territories, as required under section 51(2) of the *Constitution Act*, 1867 (see appendix A). Although it may be appealing in the abstract to say that the Charter can never tolerate

"gross" deviations from equality of voting power, both courts and Parliament have in the past made exceptions in compelling cases.

It should not be concluded that departures beyond 25 percent of the provincial quotient can never be justified. Section 1 of the Charter primarily governs the form rather than the substance of departures from Charter rights; and in many cases, better drafted laws can be justified under section 1. For example, one minimal reform would be to define "extraordinary circumstances" in terms of the values listed in section 15 to justify departure within the 25 percent deviation limit. This, at least, would mean that the general reasons for limiting the Charter rights would be "prescribed by law." Problems could arise, however, because some of the reasons, especially preserving the historical pattern or existing political boundaries of a riding, might not be held to be pressing and substantial enough to justify infringing a Charter right. Even if the courts deferred to the legislature on this matter, their views about the relative importance of the objective would influence their judgement in determining whether an appropriate balance had been struck between limiting a Charter right severely and pursuing governmental objectives that were less than crucial.

Another value listed in section 15 of the Act, limiting the geographic size of a riding, might be vulnerable to a proportionality test which asks whether there are other ways to pursue governmental objectives which infringe Charter rights less. The rationale behind limiting the geographic size of a riding is a concern about the effective servicing of a riding. J. Patrick Boyer refers to this as "quality of representation" and talks about "the disadvantage of electors living in the northern, remote or scattered parts of Canada" in having access to their member of Parliament (Boyer 1987, v. 1, 105). Both the Dixon (1989a, 266) and the Saskatchewan Districting Reference (1991, 462) decisions sanction the idea that one of the functions of a member is to act as an "ombudsman," addressing the servicing needs of his or her constituents. This is an important function, but the problem under section 1 as recognized by the Saskatchewan Court of Appeal in the context of rural (but not northern) ridings is that "other, non-infringing and equally effective methods" exist to promote quality of service without creating districts with disproportionately small populations. Servicing problems can be addressed more directly through increased travel and office allowances for members, free telephone lines and many other services. Similarly, in balancing the objective of quality of servicing against the effect of infringing Charter rights, it would be relevant that by creating less populous districts in sparsely populated areas in order to achieve servicing objectives, these very same objectives might be hampered in urban areas where a member would have to address the servicing needs of larger and increasingly diverse numbers of constituents (*Dixon* 1989a, 260).

Whatever the logic of arguments that districting is a disproportionate means to achieve servicing objectives, judges may at an instinctive level accept the particular needs of northern regions, especially when Parliament has already provided special servicing allowances and has also created less populous ridings. At the same time as it rejected arguments that servicing rural areas justified less populous ridings, the Saskatchewan Court of Appeal concluded that two northern ridings with disproportionately small populations were clearly justified by "[t]he exigencies of geography, very sparse population, transportation and communication," without even mentioning the possibility of more proportionate means of addressing these problems. At least when dealing with remote northern communities, courts may continue to accept that districting is a rational and necessary way to address the objective of quality of service.

In my view, the best justification for departures over 25 percent is for Parliament to make clear that some less populous ridings are required because of the demands for regional representation in the House of Commons. Regional representation was specifically recognized in *Dixon* as meeting both the general section 3 "good government" test and the section 1 "pressing and substantial" test for justifications for departing from equality of voting power. Regional representation is in part subsumed under the broad rubric of "community of interest and community of identity" under section 15 of the *Electoral Boundaries Readjustment Act*, but it would be preferable from the standpoint of Charter analysis if it were to be separated from other less pressing considerations such as respecting existing political boundaries.

Once regional representation is identified as the objective for departures, it becomes incumbent on the government to demonstrate how such departures are prescribed by law and rationally connected to that goal. One way would be to borrow from the techniques that are already used in the Constitution to recognize the place of regional representation in the distribution of seats in the House of Commons. As has been discussed in the first part of this study, section 51(2) makes it clear that regardless of population, the Northwest Territories are entitled to two members and the Yukon Territory to one member. Similarly, section 51A states that notwithstanding anything in the Act, no province shall have less members than senators. An analogous approach could be taken under the *Electoral Boundaries Readjustment Act* so that specific regions such as Labrador, Îles de la Madeleine, Gaspé and northern regions of some provinces were entitled to a member. Statutory requirements that

certain regions be represented by a member would meet the requirement of prescribing by law limits on Charter rights, and they would make clear that the law limiting the Charter right was rationally connected to the objective of ensuring regional representation.

Would such statutory definitions of ridings for the purpose of regional representation pass the proportionality test under section 1? It is difficult to conceive of alternative ways that regions could be effectively represented in the House of Commons if they did not have a member. A region such as Labrador would still be represented by a member, but its distinct political, social and economic interests would not be as effectively represented by a member who had to balance his or her concerns for that region with the legitimate claims of other constituents in Newfoundland. Unlike the servicing rationale, which begs the question of more effective and creative means to ensure quality of representation, the regional representation rationale seems to lead to the conclusion that districting must be used as a means to ensure that objective. Nevertheless, it should be recognized that in Labrador and other distinct regions, the servicing problems created by geographical isolation would also be a factor justifying a separate riding.

Although the provision for departures beyond 25 percent of the provincial quotient in "extraordinary circumstances" would be difficult to justify under section 1 of the Charter in its present undefined format, there is also the question of the other parts of section 15 of the *Electoral Boundaries Readjustment Act* which allow for deviations within the 25 percent limit for specified reasons, including respecting communities of interest and identity and maintaining the geographic size and historical pattern of a riding. It is clear that courts are likely to scrutinize departures even if they are less than 25 percent from the provincial quotient (*Dixon* 1989a; *Saskatchewan Districting Reference* 1991).

An initial problem is whether the broad standards listed in the Act meet the threshold requirement of being limits that are prescribed by law, especially given the broad powers that the independent boundary commissions have in applying these statutory criteria. John Courtney has criticized the discretion that the commissions have to import their own standards. He argues:

Depending upon the predisposition of the commissioners and the ability of local political interests to present persuasive arguments, such a structure invites, notwithstanding the unifying language of the *Electoral Boundaries Readjustment Act*, the introduction of differing standards on a province-by-province basis for the design of parliamentary electoral districts ... A commission is ... free to interpret and to apply the provisions of the *Electoral Boundaries Readjustment* 

Act as it sees fit. As this is done without any requirement or expectation that one body will consult with another or take into account the likely responses of other commissions to similar representational problems, interprovincial differences are bound to occur. (Courtney 1988, 676, 678)

Andrew Sancton is even more critical. He claims that the provisions of the present Act "effectively free electoral boundaries from all significant constraints relating to the populations of electoral districts" (Sancton 1990, 445).

Despite these criticisms, the *Electoral Boundaries Readjustment Act* does set out intelligible standards for departures. The independent boundaries commissions derive their powers from the Act, and the discretion granted to them by that Act to deviate from the provincial quotients make the Act itself a limit prescribed by law which can be justified under section 1, despite the fact that not all commissions exercise their statutory powers in an identical fashion (*Slaight* 1989, 446–47). Any statutory framework would leave discretion to the independent boundary commissions, but the present criteria provide these bodies with "intelligible standards" with which to work and thus "prescribe by law" the limits that are placed on the right to equality in voting power.

Although the courts have generally been quite deferential in determining whether an objective is "pressing and substantial," the Saskatchewan Districting Reference demonstrates that there are no guarantees that courts will accept traditional factors as important enough to justify overriding a Charter right to equality of voting power. Perhaps the most radical and potentially far-reaching aspect of the Saskatchewan Districting Reference (1991, 480) is its unambiguous rejection of the traditional practice of creating less populous rural ridings for servicing reasons. The Court of Appeal concluded that modern transportation and communication have made this practice anachronistic. The court also rejected the need to ensure regional representation of a rapidly depopulating area with the assertion that the very notion of regional representation was "divisive" and "we have no evidence that 'urban' members of the Legislative Assembly are insensitive to concerns and community interests of rural or northern people." Under this radical approach, all of the criteria in section 15 of the present Act, with the exception of its instruction to maintain a manageable geographic size of ridings in northern regions, would fail to be objectives important enough to limit Charter rights.

Even if the Supreme Court of Canada were to follow the more deferential *Dixon* approach of accepting both geographic and regional considerations as "pressing and substantial," not all the objectives in section 15 of the Act could meet this test. Some aspects of community of interest or identity, such as respect for existing political subdivisions, may be found not to be "pressing and substantial." As will be seen, Justice McLachlin suggested that preserving the historical pattern of a riding may also not be important enough.

The most problematic portion of the section 1 analysis will, once again, be considering whether districting is a proportional way to achieve the objectives listed in the *Electoral Boundaries Readjustment Act*. It is difficult to determine if the objective of preserving either a historical pattern of a riding or a riding's community of interest or identity violates equality of voting power "as little as possible." In response to the argument that British Columbia's electoral map was in part designed to reflect historical patterns of a riding, Justice McLachlin bluntly stated that "there are better ways of fostering a sense of history among people of different regions than perverting the electoral process" (Dixon 1989a, 268). This reasoning could potentially undermine the whole concept of deviating from provincial quotients to reflect community of interest or identity. Community identity can always be fostered by means other than "perverting" the federal electoral process. For example, provincial electoral boundaries may be able to reflect communities of interest more accurately than federal ones. At the very least, municipal and regional political structures can accomplish this end without infringing section 3 of the Charter. The problem with this argument is that it leaves little or no room for deference to the legislative judgement on proportionality and really amounts to an attack on the importance of the objectives in question. As Justice McLachlin recognized elsewhere in her judgement, "The process of adjusting for factors other than population is not capable of precise mathematical definition. People will necessarily disagree on how important a regional grouping is to the boundary of this riding, on how significant problems of serving constituents are to that electoral district. It is for the legislatures to make decisions on these matters, and not for the courts to substitute their views" (Dixon 1989a, 271). This more deferential approach is in accord with recent developments in which the Supreme Court has stressed deference in assessing both importance and proportionality under section 1 (Edwards Books 1986; Irwin Toy 1989; McKinney 1990). As in those cases, districting involves the allocation of scarce resources and, as such, the courts will only ask that there be a reasonable basis for decisions to create some less populous ridings.

In short, the ability of the commissions to make departures beyond 25 percent of the provincial quotient is vulnerable because it leaves the

limits placed on rights unprescribed and leaves the objectives to justify such robust departures undefined. Departures within the 25 percent standard may still be scrutinized under section 1. The objective of limiting the geographic size of sparsely populated northern and especially rural ridings to promote quality of service may be vulnerable on the basis that there are other less intrusive ways to pursue this objective. Preserving the historical pattern of a riding and respecting existing political boundaries may not be important enough objectives to limit Charter rights. Perhaps the strongest justification for departures from the provincial quotient is the need for regional representation in the House of Commons. Although rejected in the Saskatchewan Districting Reference as not being "pressing and substantial," it was recognized as such in Dixon. Once regional representation is accepted, it is difficult to imagine means other than the districting process to pursue it. Balancing the benefits to a limited number of distinct regions of being represented by a member against the costs to other regions of minimal vote dilution will likely result in the conclusion that such restrictions are justified.

# **Remedies for Present Districting**

If districting practices are held to violate either section 3 or 15 of the Charter and not to be justified under section 1, courts will have to assume responsibility for devising the remedy they consider "appropriate and just" under section 24(1) of the Charter. The possibility of strong and effective judicial remedies here can be contrasted with the remedial dilemmas presented by the possibility that remedies in the distribution context may very well require constitutional amendments.

In Dixon, Justice McLachlin adopted a relatively deferential remedial posture while making it clear that she would consider more drastic remedies if the legislature did not act promptly to introduce reform legislation to provide for electoral districts that respected constitutional standards of relative equality of voting power. Justice McLachlin refused to declare British Columbia's boundaries of no force or effect as a result of their inconsistency with the Charter, because the consequence of such an order would not have been to produce compliance with the Charter but rather to prevent the effective implementation of voting rights. She stated, "If the provisions prescribing electoral districts in British Columbia are set aside, the electoral districts vanish. Should an election be required before they are restored, it would be impossible to conduct it. The result would be the disenfranchisement of the citizens of the province" (Dixon 1989a, 281). Reasoning that this result would be analogous to the emergency created by the invalidation of all of Manitoba's unilingual laws, Justice McLachlin followed the Supreme

Court's example in the *Manitoba Language Reference* and declared that although the boundaries did not meet the standards of the Charter, they would stay in place on a temporary basis in order to avoid the emergency that would result should an election be called. Thus the government was given time to enact reform legislation.

This deferential remedial approach, which essentially remanded the problem back to the legislature, follows naturally from Justice McLachlin's understanding of voting rights protecting relative as opposed to absolute equality of voting power. I have stated elsewhere that "For the court to proceed directly to order new electoral boundaries would require the judiciary to substitute its views of wise deviations from the equal population standard for that of the legislature, or what is more likely, to craft a judicial remedy that implemented only the bare bones of the equal population standard while ignoring legitimate policy reasons for deviations from that standard" (Roach 1990, 93–94).

Even in the Saskatchewan Districting Reference (464), the Court of Appeal sounded a deferential note on the matter of remedies by stating that it was the function of the legislature not the courts "to craft electoral boundaries for constituencies." In that case, the Court of Appeal was able to avoid the practical remedial difficulties tackled by Justice McLachlin because in a technical sense it was offering its advice to the Cabinet only on a reference decision. Should the Supreme Court of Canada adopt the "one person, one vote" standard, it might very well follow the example in Dixon. In order to ensure that elections could always be held and for reasons of institutional competence, it might allow the legislature the opportunity to reform its own electoral boundaries.

In the highly unlikely event that a court would find itself in a position where a recalcitrant legislature left it no alternative but to set electoral boundaries itself, such a judicial remedy could not, as in the United States, be a final remedy dictated as a matter of constitutional right. Governments would always have the option to revise the court's remedy and to justify their deviations from a "one person, one vote" standard under section 1. The structure of the Charter effectively precludes a situation where the courts could, as they did in the United States for elections of the House of Representatives, dictate a "one person, one vote" standard as the only acceptable districting formula. Canadian legislatures could always legitimately come back and try to justify departures from the court's remedy under section 1.

It should not be assumed that courts will always be deferential when responding to unconstitutional electoral boundaries. Justice McLachlin made it clear in *Dixon* that should the legislature not promptly reform its own house, invalidation of the unconstitutional electoral

boundaries would be the minimum remedy. Although Justice McLachlin only hinted that the remedial powers of the courts were broad, other remedies could include setting time limits for the period of temporary validity, issuing an injunction to compel the legislature to enact constitutional boundaries or, in the final resort, issuing a judicial order that would establish constitutional boundaries (McLachlin 1990). Courts may, however, be reluctant to issue such remedies. A month after the release of Justice McLachlin's Dixon judgement, the plaintiffs brought a motion before another judge of the British Columbia Supreme Court, asking that the period of temporary validity be ended and the unconstitutional boundaries declared of no force and effect. Not only did the judge refuse to grant this remedy, but he made broad statements that the court could not set time limits for the enactment of legislation or devise its own remedy (Dixon 1989b). I have argued elsewhere that this judgement is wrong, both in its characterization of the implications of granting further relief and in ignoring authorities which could justify further relief (Roach 1990). The important point here is that despite some judicial reluctance to force the legislative hand or to issue its own reapportionment remedy, it would be imprudent for Parliament to ignore the possibility that some courts might resort to drastic and intrusive remedies to secure constitutional electoral boundaries should they find Parliament unwilling to reform unconstitutional boundaries.

Another important feature of the remedial story in *Dixon* was the crucial role played by the recommendations of the Fisher Royal Commission on Electoral Boundaries in British Columbia. In an effort to encourage the British Columbia legislature to introduce reform legislation promptly, Justice McLachlin expressly approved of the commission's recommendations, both with regard to its maximum deviation limit and its proposed electoral map, and stated that "[i]f the legislature acts to adopt a scheme similar to that proposed in the Fisher commission's Report within the time specified by the court ... the court's involvement will be at an end" (*Dixon* 1989a, 283). Given the temporary nature of the validity that would be given to electoral boundaries that are found to be unconstitutional, the availability of concrete reform proposals is very important.

It is interesting to note that while the British Columbia legislature by and large implemented the recommendations of the Fisher Commission (including the reforms of forming an independent boundary commission, expanding the legislature to allow continued representation from northern regions of the province and establishing a 25 percent deviation limit), the new legislation still allowed for departures from that generous limit where the boundary commission "considers that very special circumstances exist." It instructed the boundary commission to implement "the principle of representation by population ... recognizing the imperatives imposed by geographical and demographic realities, the legacy of our history and the need to balance the community interests of the people of the Province" (British Columbia, *Electoral Boundaries Commission Act*, s. 9). Thus, British Columbia's response to the *Dixon* decision is one that continues Canadian traditions of allowing generous departures from a "one person, one vote" stan-

dard in all cases and allowing for even greater departures in special cases. In the end, however, Justice McLachlin, for one, seems satisfied

with the result. She has written:

The Court's call to the government to correct the defective legislation was heeded in *Dixon* ... The government moved to introduce legislation in conformity with the *Charter* and the legislation was promptly passed. The case illustrates how the court and the legislature, each acting within the bounds of its proper constitutional responsibilities and each accepting its different constitutional responsibility, can efficaciously resolve a difficult issue. (McLachlin 1990, 63)

#### CONCLUSION

This study has explored the constitutional dilemma of how the provincial identities fostered by the division of powers and the local identities fostered by traditional districting practices are to be reconciled with the rights that individuals and groups now have protected under the Charter. In the case of distribution, older provisions preserving effective representation from the less populous provinces and territories are likely to win out over Charter considerations, because past distribution policies which depart from a "one person, one vote" standard have themselves become part of the Constitution. Courts are likely to continue to hold that Charter standards – such as equality of voting power – cannot be used to override other parts of the Constitution – such as the senatorial minimum – which mandate departures from them.

The fact that the legal question may be settled in such a preemptory fashion does not mean that there is no point in assessing constitutionally prescribed distributions in light of Charter standards. Constitutional departures from a strict "one person, one vote" standard in order to ensure representation in the House of Commons for less populous provinces and territories may very well comply with a standard of *relative* equality of voting power under section 3 of the Charter, as it has been interpreted in *Dixon*. Likewise, the legal disadvantage of vote "dilution" suffered by those in the more populous provinces may not be a violation of the equality rights in section 15

of the Charter, as they have been interpreted by the Supreme Court. Even if the stricter approach to equality of voting power taken by the Saskatchewan Court of Appeal is embraced, governments may be able to justify present distributions as reasonable limits under section 1 that are justified by the need to ensure effective regional representation in the House of Commons as well as reasonable servicing in the territories. Thus, distributions to favour less populous regions, such as the territories and Prince Edward Island, may well be compatible with Charter standards even if they are also immune from Charter review because of their constitutional status.

Unlike the situation in the distribution context, there is little doubt that courts will review districting practices under the Election Boundaries Readjustment Act to see if they meet Charter standards of equality of voting power. Canadian courts have rejected the notion of nonjusticiable political questions and they have already found electoral boundaries in two provinces to be unconstitutional. This makes reform a rather urgent priority, because the present federal districting process is vulnerable to Charter attack on several grounds. Independent boundary commissions operate within a general statutory framework that they can make departures within 25 percent of the provincial quotient on the basis of respecting communities of interest or identity and the historical pattern of a riding, and limiting the geographical size of sparsely populated, rural and northern ridings. All departures from a "one person, one vote" standard will have to be justified under the Charter, and some of these statutory objectives are of dubious importance or are susceptible to accomplishment through means which do not involve violating Charter rights to equality of voting power. For example, respecting the historical pattern of a riding may not be a good enough reason to depart from a Charter standard. Another vulnerable provision is the 1986 amendment which allows commissions to depart from the 25 percent tolerance standard in undefined "extraordinary circumstances." In justifying departures from a "one person, one vote" standard under either sections 3 or 1 of the Charter, governments must be able to articulate clearly the objectives for all departures. Although it may be possible to justify departures over 25 percent of the provincial quotient in order to ensure representation of distinct regions within a province such as Labrador, the present provision falls far short of articulating this justification.

The most promising method of justifying departures from equal population standards, including robust departures in the case of distinct or remote regions, may be to borrow from the distribution context and, in a manner analogous to the constitutional protections accorded the less

populous provinces and the territories, prescribe that certain regions are entitled to be represented by a member. Regional representation has been recognized, at least in *Dixon*, as important enough to justify departures from equal population standards, and it is less susceptible to reversal on the grounds that there are more proportionate ways to achieve that objective. It balances guaranteed representation for a small number of distinct regions with minimal dilution of the votes of those who live in more populous regions of Canada and whose interests are already effectively represented in the House of Commons. The key to dealing with the challenges that the Charter brings to the districting process may be to borrow from the tradition of explicit regional representation that has characterized the distribution process. Such an approach would make the integration of older constitutional traditions with the Charter complete.

#### **POSTSCRIPT**

On 6 June 1991, the Supreme Court of Canada overturned the decision of the Saskatchewan Court of Appeal in the Saskatchewan Districting Reference. (The case was heard in the Supreme Court under the name Carter v. Saskatchewan (Attorney General).) The Court held in a 6-3 decision that Saskatchewan's electoral boundaries did not violate section 3 of the Charter. In her majority opinion, Justice McLachlin followed the approach set out in her judgement in Dixon and decided that section 3 of the Charter protected "relative parity of voting power." Relying on the context set by Canadian electoral traditions, she concluded that "the purpose of the right to vote enshrined in s. 3 of the Charter is not equality of voting power per se, but the right to 'effective representation' " (Carter 1991, 35). This meant that, as in Dixon, deviations from equal population standards were justified if they contributed to the better government of the populace. By way of elaboration she stated: "Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. These are but examples of considerations which may justify departure from absolute voter parity in the pursuit of more effective representation" (ibid., 36).

On the specific facts of the case, Justice McLachlin noted with approval that variances in voter population in southern Saskatchewan fell within 25 percent (plus or minus) of the equal population quotient. She did not invalidate the rural/urban split stating that "the goal of effective representation may justify somewhat lower voter populations in rural areas" because of servicing demands placed on rural members

and "difficulty in transport and communications" (ibid., 44). Justice McLachlin found that deviations among different rural and urban ridings were also explained by factors such as geographic boundaries, municipal boundaries, community interest and predictions of population growth. The decision thus affirms the legitimacy of the broadest range of community-of-interest considerations, including some that were doubtful under *Dixon*, such as respect for the history of ridings and existing political boundaries.

Departures beyond even a generous 25 percent standard in the two northern ridings did not violate section 3 "given the sparse population and the difficulty of communication in the area" (ibid., 45). Thus, the least populous remote northern riding of Athabasca with 6 309 voters could stand alongside the most populous urban riding of Saskatoon–Greystone with 12 567 voters (*Saskatchewan Districting Reference* 1991, 472–73). The Court has made clear that quite robust definitional limits on equality of voting power can be accepted without violating section 3 of the Charter.

In his dissenting judgement, Justice Cory found that mandatory allocation of a majority of seats to rural ridings interfered with the rights of the growing population of urban voters in Saskatchewan. Voting rights were violated by Saskatchewan's frequent deviation from a 15 percent tolerance from the quotient. They were also violated by the "shackling" of the independent boundary commission in its districting process by "a strict quota of urban and rural ridings," and the legislative definition of urban ridings that limited them by municipal boundaries. He stressed that the 1981 electoral map demonstrated that boundaries could be drawn in a manner that better respected equality of voting power. Nevertheless, Justice Cory accepted the need for the two northern ridings to be treated differently, and held that they were justified under section 1.

This decision settles the conflict identified in this study between requiring "one person, one vote" as far as practicable and subject to section 1 justifications, and requiring only relative equality of voting power as part of a definitional limit on the right to vote. The concept of a relatively generous deviation tolerance and broad range of criteria for departures from equal population standards has been approved by a majority of the highest court as not violating section 3 of the Charter. The Court has decided that the right to vote primarily involves a qualitative concern that the legislature "effectively represent the diversity of our social mosaic" as opposed to a quantitative concern with the relative populations of ridings and the abstract value of an individual's vote. Departures beyond an undefined, but obviously generous,

standard of relative equality of voting power will still violate section 3 and have to be justified by the government under section 1 of the Charter. The Court has recognized, however, that the distribution and districting of ridings involve matters where "the courts must be cautious in interfering unduly in decisions that involve the balancing of conflicting policy considerations" (*Carter* 1991, 39).

Departures from equal population standards are justified for geographic reasons that affect the servicing of rural, northern and remote ridings. Unlike the Saskatchewan Court of Appeal, the majority of the Supreme Court accepts the importance of having less populous rural and northern ridings to promote quality of service. It will therefore not apply a rigorous proportionality analysis that demands that servicing needs be addressed directly and not through the districting process.

The Court made it clear that departures from equal population standards are also justified to promote effective regional, community and minority representation. The explicit sanction given to recognizing cultural and group identity in the districting process, and the need for effective minority representation in the legislature, suggests that the Court has begun to integrate its interpretation of section 3 with its understanding of equality rights. Likewise, the recognition of the demands of effective regional and community representation suggests that the Court has interpreted section 3 in accordance with older constitutional traditions that have influenced the distribution of seats in the House of Commons. "One person, one vote" will not be the constitutional standard for distribution and districting in Canada.

# APPENDIX A ENUMERATION AND CENSUS POPULATIONS FOR FEDERAL RIDINGS

Table 1.A1
Enumeration and census populations for federal ridings: Ontario (1986–87 redistricting)

		Population			% deviation from quotient			
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors		
Algoma	68 322	66 870	44 523	-21.6	-27.3	-30.1		
Beaches-Woodbine	94 441	94 920	60 205	8.4	3.2	-5.5		
Brampton	88 220	122 128	82 760	1.3	32.8	29.9		
Brampton-Malton	94 268	100 388	57 354	8.2	9.2	-10.0		
Brant	92 271	94 540	66 603	5.9	2.8	4.5		
Broadview-Greenwood	92 314	91 517	55 124	6.0	-0.5	-13.5		
Bruce-Grey	89 721	90 127	67 587	3.0	-2.0	6.1		
Burlington	94 050	91 327	65 582	8.0	-0.7	2.9		
Cambridge	96 827	106 050	71 209	11.1	15.4	11.7		
Carleton-Gloucester	79 706	104 377	78 527	-8.5	13.5	23.2		
Cochrane-Superior	65 927	63 160	42 000	-24.3	-31.3	-34.1		
Davenport	95 861	93 909	38 763	10.0	2.1	-39.2		
Don Valley East	91 994	89 902	56 566	5.6	-2.2	-11.2		
Don Valley North	89 869	88 206	52 348	3.2	-4.1	-17.9		
Don Valley West	94 347	93 733	65 080	8.3	2.0	2.1		
Durham	87 393	93 897	70 969	0.3	2.1	11.4		
Eglinton-Lawrence	97 365	97 145	54 362	11.8	5.7	-14.7		
Elgin	80 885	81 167	56 973	-7.2	-11.7	-10.6		
Erie	76 653	75 617	52 475	-12.0	-17.8	-17.7		
Essex-Kent	76 266	76 524	52 144	-12.5	-16.8	-18.2		
Essex-Windsor	86 213	87 754	57 390	-1.0	-4.5	-9.9		
Etobicoke Centre	91 152	89 157	62 644	4.6	-3.0	-1.7		
Etobicoke-Lakeshore	95 514	93 753	62 321	9.6	2.0	-2.2		
Etobicoke North	96 309	100 313	64 891	10.5	9.1	1.8		
Glengarry-Prescott-Russell	80 903	87 138	68 868	-7.1	-5.2	8.1		
Guelph-Wellington	93 120	101 546	78 562	6.9	10.5	23.3		

Table 1.A1 (cont'd) (1986–87 redistricting)

	Population			% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Haldimand-Norfolk	84 910	85 789	60 684	-2.5	-6.7	-4.8
Halton-Peel	88 407	95 798	68 841	1.5	4.2	8.0
Hamilton East	85 807	83 199	54 070	-1.5	-9.5	-15.2
Hamilton Mountain	92 566	91 697	66 261	6.2	-0.3	4.0
Hamilton-Wentworth	87 580	98 229	74 178	0.5	6.8	16.4
Hamilton West	88 873	86 845	62 738	2.0	-5.5	-1.6
Hastings-Frontenac- Lennox and Addington	78 943	82 209	58 675	-9.4	-10.6	-7.9
Huron-Bruce	89 574	88 586	61 779	2.8	-3.6	-3.1
Kenora-Rainy River	74 612	70 514	49 450	-14.4	-23.3	-22.4
Kent	80 936	81 117	55 936	-7.1	-11.8	-12.2
Kingston and the Islands	89 121	94 898	77 014	2.3	3.2	20.8
Kitchener	98 956	101 460	72 501	13.6	10.4	13.8
Lambton-Middlesex	76 223	74 836	53 522	-12.5	-18.6	-16.0
Lanark-Carleton	84 892	101 299	75 150	-2.6	10.2	17.9
Leeds-Grenville	80 941	84 582	60 943	-7.1	-8.0	-4.4
Lincoln	86 612	94 775	67 019	-0.6	3.1	5.2
London East	93 862	96 831	74 243	7.7	5.3	16.5
London-Middlesex	89 632	94 707	66 394	2.9	3.0	4.2
London West	96 542	103 615	79 917	10.8	12.7	25.4
Markham	90 594	129 732	91 656	4.0	41.1	43.8
Mississauga East	94 564	113 216	70 152	8.5	23.1	10.1
Mississauga South	94 907	96 033	62 778	8.9	4.5	-1.5
Mississauga West	92 127	130 738	93 312	5.7	42.2	46.4
Nepean	84 361	95 490	69 804	-3.2	3.9	9.5
Niagara Falls	83 146	84 601	60 530	-4.6	-8.0	-5.0
Nickel Belt	78 971	74 608	51 312	-9.4	-18.8	-19.5
Nipissing	72 431	71 929	51 513	-16.9	-21.8	-19.2
Northumberland	80 079	83 016	62 067	-8.1	-9.7	-2.6

Table 1.A1 (cont'd) (1986–87 redistricting)

		Population	1	% devia	ation from	quotient
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Oakville-Milton	98 071	113 052	83 742	12.6	23.0	31.4
Ontario	95 724	127 090	95 824	9.9	38.2	50.4
Oshawa	91 263	95 189	63 626	4.8	3.5	-0.2
Ottawa Centre	83 254	83 224	61 431	-4.4	-9.5	-3.6
Ottawa South	86 059	94 191	67 830	-1.2	2.5	6.4
Ottawa-Vanier	87 527	88 712	65 118	0.5	-3.5	2.2
Ottawa West	79 570	80 464	59 606	-8.7	-12.5	-6.5
Oxford	91 444	90 591	64 737	5.0	-1.5	1.6
Parkdale-High Park	92 005	93 424	58 533	5.6	1.6	-8.2
Parry Sound-Muskoka	71 898	74 063	57 396	-17.5	-19.4	-9.9
Perth-Wellington-Waterloo	90 712	92 026	64 148	4.1	0.1	0.7
Peterborough	93 343	94 999	73 405	7.1	3.3	15.2
Prince Edward-Hastings	87 215	88 936	65 143	0.1	-3.3	2.2
Renfrew	88 915	90 376	61 870	2.1	-1.7	-2.9
Rosedale	94 399	106 893	72 038	8.4	16.3	13.0
St Catharines	92 990	92 861	65 684	6.7	1.0	3.1
St Paul's	96 624	98 055	67 199	10.9	6.7	5.4
Sarnia-Lambton	83 951	85 700	57 683	-3.6	-6.8	-9.5
Sault Ste Marie	78 077	76 447	53 556	-10.4	-16.8	-16.0
Scarborough-Agincourt	87 987	97 257	58 727	1.0	5.8	-7.9
Scarborough Centre	90 905	87 000	57 164	4.3	-5.4	-10.3
Scarborough East	87 875	90 044	55 890	0.9	-2.1	-12.3
Scarborough–Rouge River	86 058	119 165	67 623	-1.2	29.6	6.1
Scarborough West	90 528	91 210	57 376	3.9	-0.8	-10.0
Simcoe Centre	90 798	97 694	72 978	4.2	6.3	14.5
Simcoe North	86 913	90 507	68 644	-0.2	-1.6	7.7
Stormont-Dundas	80 157	81 275	59 060	-8.0	-11.6	-7.3
Sudbury	81 672	78 515	58 144	-6.3	-14.6	-8.8
Thunder Bay-Atikokan	68 110	68 555	48 556	-21.8	-25.4	-23.8

Table 1.A1 (cont'd) (1986–87 redistricting)

		Population	1	% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Thunder Bay-Nipigon	70 292	70 195	50 483	-19.3	-23.6	-20.8
Timiskaming	60 523	58 286	40 934	-30.5	-36.6	-35.8
Timmins-Chapleau	65 680	63 839	44 244	-24.6	-30.6	-30.6
Trinity-Spadina	94 291	93 407	54 536	8.2	1.6	-14.4
Victoria-Haliburton	77 583	84 620	65 670	-10.9	-8.0	3.0
Waterloo	92 018	103 685	80 513	5.6	12.8	26.3
Welland-St Catharines- Thorold	85 506	85 706	63 623	-1.9	-6.8	-0.2
Wellington-Grey-Dufferin- Simcoe	91 679	95 216	69 186	5.2	3.6	8.6
Willowdale	94 415	94 259	65 066	8.4	2.5	2.1
Windsor-Lake St Clair	85 759	87 157	59 438	-1.6	-5.2	-6.7
Windsor West	91 743	91 916	63 010	5.3	-0.0	-1.1
York Centre	92 558	92 976	56 740	6.2	1.1	-11.0
York North	93 734	144 225	116 131	7.6	56.9	82.2
York-Simcoe	94 618	106 719	77 409	8.6	16.1	21.5
York South-Weston	93 747	94 314	53 203	7.6	2.6	-16.5
York West	96 837	102 162	48 189	11.2	11.1	-24.4

Source: Constituencies based on 1981 census, 1987 Representation Order: Canada, Canada Gazette, 17 July 1987. Part I, extra no. 4, vol. 121 (Electoral Boundaries Readjustment Act: Proclamation of the Representation Order) (Ottawa).

<sup>1986</sup> census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

<sup>1988</sup> electors: Canada, Office of the Chief Electoral Officer. 1988 Report on the Thirty-Fourth General Election: Summary (Ottawa: Minister of Supply and Services Canada).

Table 1.A2
Enumeration and census populations for federal ridings: Quebec (1986–87 redistricting)

		Population		% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Abitibi	86 312	86 991	61 409	0.5	-0.1	-2.8
Ahuntsic	89 383	91 014	66 906	4.1	4.5	5.9
Anjou-Rivière-des-Prairies	83 760	97 635	73 763	-2.4	12.1	16.7
Argenteuil-Papineau	72 039	73 524	55 217	-16.1	-15.6	-12.6
Beauce	93 233	95 674	68 530	8.6	9.8	8.4
Beauharnois-Salaberry	87 675	85 212	65 032	2.1	-2.2	2.9
Bellechasse	85 382	83 395	59 986	-0.5	-4.3	-5.1
Berthier-Montcalm	89 706	94 035	72 746	4.5	8.0	15.1
Blainville-Deux-Montagnes	106 877	114 778	88 069	24.5	31.8	39.3
Bonaventure- Îles de la Madeleine	52 046	51 719	36 609	-39.4	-40.6	-42.1
Bourassa	94 914	90 303	62 097	10.6	3.7	-1.7
Brome-Missisquoi	75 671	75 964	55 464	-11.9	-12.8	-12.2
Chambly	88 686	92 685	67 286	3.3	6.4	6.5
Champlain	83 963	85 473	61 672	-2.2	-1.9	-2.4
Chapleau	100 582	108 818	78 810	17.2	24.9	24.7
Charlesbourg	105 401	106 894	77 676	22.8	22.7	22.9
Charlevoix	82 964	81 102	57 275	-3.4	-6.9	-9.4
Châteauguay	87 985	88 268	70 945	2.5	1.3	12.3
Chicoutimi	85 667	86 241	58 609	-0.2	-1.0	-7.3
Drummond	77 492	79 608	57 832	-9.7	-8.6	-8.5
Duvernay	89 426	94 435	71 474	4.2	8.4	13.1
Frontenac	66 677	63 658	44 383	-22.3	-26.9	-29.8
Gaspé	62 986	60 736	40 982	-26.6	-30.3	-35.2
Hochelaga-Maisonneuve	85 325	82 184	61 240	-0.6	-5.6	-3.1
Hull-Aylmer	82 920	87 698	63 094	-3.4	0.7	-0.2
Joliette	90 378	95 270	72 067	5.3	9.4	14.0
Jonquière	68 610	67 598	46 846	-20.1	-22.4	-25.9
Kamouraska-Rivière-du-Loup	73 747	72 753	51 603	-14.1	-16.5	-18.4

Table 1.A2 (cont'd) (1986–87 redistricting)

		Population	1	% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Lachine-Lac-Saint-Louis	99 442	97 592	70 051	15.8	12.0	10.8
Lac-Saint-Jean	69 229	69 391	47 132	-19.4	-20.3	-25.4
Langelier	95 226	94 243	74 312	10.9	8.2	17.6
La Prairie	91 918	97 639	72 723	7.1	12.1	15.1
Lasalle-Emard	96 622	95 884	67 584	12.6	10.1	6.9
Laurentides	97 227	99 124	78 847	13.3	13.8	24.8
Laurier-Sainte-Marie	86 861	83 492	59 956	1.2	-4.1	-5.1
Laval	88 915	95 774	70 688	3.6	10.0	11.8
Laval-des-Rapides	89 994	93 955	70 941	4.8	7.9	12.2
Lévis	95 128	104 366	77 784	10.8	19.8	23.1
Longueuil	105 756	106 857	77 055	23.2	22.7	21.9
Lotbinière	90 381	92 423	65 599	5.3	6.1	3.8
Louis-Hébert	90 206	94 500	77 036	5.1	8.5	21.9
Manicouagan	69 488	57 075	37 182	-19.1	-34.5	-41.2
Matapédia-Matane	66 324	65 390	46 097	-22.7	-24.9	-27.1
Mégantic-Compton-Stanste	ead 74 483	73 921	52 830	-13.2	-15.1	-16.4
Mercier	101 685	105 829	77 812	18.5	21.5	23.1
Montmorency-Orléans	89 540	92 589	69 268	4.3	6.3	9.6
Mount Royal	91 479	92 593	60 890	6.6	6.3	-3.7
Notre-Dame-de-Grâce	81 491	80 115	54 284	-5.1	-8.0	-14.1
Outremont	96 707	93 996	60 902	12.7	7.9	-3.6
Papineau-Saint-Michel	94 080	89 068	57 470	9.6	2.3	-9.1
Pierrefonds-Dollard	93 753	99 955	69 739	9.2	14.8	10.3
Pontiac-Gatineau-Labelle	77 291	77 421	55 143	-10.0	-11.1	-12.7
Portneuf	72 532	75 013	56 486	-15.5	-13.9	-10.6
Québec-Est	93 853	93 662	71 271	9.3	7.5	12.8
Richelieu	82 088	81 431	59 440	-4.4	-6.5	-6.0
Richmond-Wolfe	78 226	76 731	54 301	-8.9	-11.9	-14.1
Rimouski-Témiscouata	73 747	74 640	54 396	-14.1	-14.3	-13.9

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Table 1.A2 (cont'd) (1986–87 redistricting)

		Population	1	% devi	% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors	
Roberval	76 020	75 024	49 094	-11.4	-13.9	-22.3	
Rosemont	99 383	92 178	67 754	15.8	5.8	7.2	
Saint-Denis	92 722	90 931	56 971	8.0	4.4	-9.9	
Saint-Henri-Westmount	82 924	82 057	55 737	-3.4	-5.8	-11.8	
Saint-Hubert	103 801	108 726	73 280	20.9	24.8	15.9	
Saint-Hyacinthe - Bagot	83 531	85 679	63 185	-2.7	-1.6	-0.0	
Saint-Jean	80 023	83 093	62 192	-6.8	-4.6	-1.6	
Saint-Laurent	86 686	88 880	58 282	1.0	2.0	-7.8	
Saint-Léonard	95 104	90 878	62 845	10.8	4.3	-0.6	
Saint-Maurice	74 880	72 845	55 944	-12.8	-16.4	-11.5	
Shefford	82 425	86 104	63 846	-4.0	-1.1	1.0	
Sherbrooke	88 273	90 855	73 879	2.8	4.3	16.9	
Témiscamingue	81 448	81 610	57 084	-5.1	-6.3	-9.7	
Terrebonne	103 892	119 812	92 980	21.0	37.6	47.1	
Trois-Rivières	73 549	75 433	59 806	-14.3	-13.4	-5.4	
Vaudreuil	84 824	91 954	68 636	-1.2	5.6	8.6	
Verchères	76 990	82 258	61 609	-10.3	-5.6	-2.5	
Verdun-Saint-Paul	88 449	85 810	62 126	3.0	-1.5	-1.7	

Source: Constituencies based on 1981 census, 1987 Representation Order: Canada, Canada Gazette, 17 July 1987. Part I, extra no. 4, vol. 121 (Electoral Boundaries Readjustment Act: Proclamation of the Representation Order) (Ottawa).

<sup>1986</sup> census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

<sup>1988</sup> electors: Canada, Office of the Chief Electoral Officer. 1988 Report on the Thirty-Fourth General Election: Summary (Ottawa: Minister of Supply and Services Canada).

Table 1.A3
Enumeration and census populations for federal ridings: Nova Scotia (1986–87 redistricting)

		Population	1	% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Annapolis Valley-Hants	82 860	89 823	65 898	7.6	13.2	12.5
Cape Breton-East Richmond	64 485	62 822	44 209	-16.3	-20.9	-24.5
Cape Breton Highlands-Canso	66 214	66 077	48 498	-14.1	-16.8	-17.2
Cape Breton-The Sydneys	70 249	68 714	48 990	-8.8	-13.4	-16.4
Central Nova	71 222	72 676	52 325	-7.6	-8.4	-10.7
Cumberland-Colchester	78 455	79 912	59 136	1.8	0.7	1.0
Dartmouth	87 118	95 894	69 953	13.1	20.8	19.4
Halifax	92 787	91 139	71 168	20.4	14.8	21.5
Halifax West	87 351	96 481	74 149	13.4	21.5	26.6
South Shore	76 200	77 124	57 207	-1.1	-2.8	-2.3
South West Nova	70 501	72 514	52 820	-8.5	-8.6	-9.8

Source: Constituencies based on 1981 census, 1987 Representation Order: Canada, Canada Gazette, 17 July 1987. Part I, extra no. 4, vol. 121 (Electoral Boundaries Readjustment Act: Proclamation of the Representation Order) (Ottawa).

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

Table 1.A4
Enumeration and census populations for federal ridings: New Brunswick (1986–87 redistricting)

		Population	1	% devi	% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors	
Beauséjour	65 473	67 750	48 398	-6.0	-4.5	-4.9	
Carleton-Charlotte	64 060	64 845	45 935	-8.0	-8.6	-9.7	
Fredericton	80 731	85 350	63 502	15.9	20.3	24.8	
Fundy-Royal	77 353	83 387	59 239	11.1	17.5	16.4	
Gloucester-Chaleur	71 760	72 787	51 397	3.0	2.6	1.0	
Madawaska-Victoria	57 247	58 166	40 931	-17.8	-18.0	-19.5	
Miramichi	57 165	56 243	39 445	-17.9	-20.7	-22.5	
Moncton	85 649	88 128	65 269	23.0	24.2	28.3	
Restigouche	54 989	54 607	38 670	-21.0	-23.0	-24.0	
Saint John	81 976	78 179	55 955	17.7	10.2	10.0	

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

Table 1.A5
Enumeration and census populations for federal ridings: Manitoba (1986–87 redistricting)

		Population	1	% devia	ation from (	quotient
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Brandon-Souris	71 610	74 762	51 288	-2.3	-1.5	-1.5
Churchill	65 254	68 911	40 436	-11.0	-9.2	-22.4
Dauphin-Swan River	70 917	65 812	46 412	-3.3	-13.3	-10.9
Lisgar-Marquette	68 135	68 408	46 154	-7.1	-9.9	-11.4
Portage-Interlake	69 186	69 287	48 211	-5.6	-8.7	-7.5
Provencher	70 097	71 383	48 385	-4.4	-6.0	-7.1
St. Boniface	74 095	80 240	58 254	1.1	5.7	11.8
Selkirk	73 743	80 455	58 435	0.6	6.0	12.2
Winnipeg North	77 543	84 572	58 663	5.8	11.4	12.6
Winnipeg North Centre	79 823	82 688	45 010	8.9	8.9	-13.6
Winnipeg St. James	76 031	75 009	52 822	3.7	-1.2	1.4
Winnipeg South	73 433	82 940	61 172	0.2	9.2	17.4
Winnipeg South Centre	77 977	78 247	57 929	6.4	3.1	11.2
Winnipeg Transcona	78 397	80 302	56 110	6.9	5.8	7.7

Source: Constituencies based on 1981 census, 1987 Representation Order: Canada, Canada Gazette, 17 July 1987. Part I, extra no. 4, vol. 121 (Electoral Boundaries Readjustment Act: Proclamation of the Representation Order) (Ottawa).

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

Table 1.A6
Enumeration and census populations for federal ridings: British Columbia (1986–87 redistricting)

		Population		% deviation from quotient			
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors	
Burnaby-Kingsway	99 949	107 984	74 245	16.5	19.8	21.6	
Capilano-Howe Sound	72 773	74 243	52 585	-15.1	-17.6	-13.9	
Cariboo - Chilcotin	71 682	70 663	42 041	-16.4	-21.6	-31.2	
Comox-Alberni	87 182	90 036	61 779	1.7	-0.1	1.2	
Delta	77 420	82 415	54 267	-9.7	-8.5	-11.1	
Esquimalt-Juan de Fuca	75 813	82 160	58 176	-11.6	-8.8	-4.7	
Fraser Valley East	77 252	82 875	54 465	-9.9	-8.0	-10.8	
Fraser Valley West	78 480	95 014	65 687	-8.5	5.4	7.6	
Kamloops	84 149	79 538	52 463	-1.9	-11.7	-14.1	
Kootenay East	71 412	70 802	43 267	-16.7	-21.4	-29.1	
Kootenay West-Revelstoke	73 567	67 317	42 096	-14.2	-25.3	-31.1	
Mission-Coquitlam	82 708	91 814	62 641	-3.6	1.9	2.6	
Nanaimo-Cowichan	99 107	100 151	69 950	15.6	11.1	14.6	
New Westminster-Burnaby	99 749	102 992	74 598	16.3	14.3	22.2	
North Island-Powell River	85 936	86 709	55 348	0.2	-3.8	-9.4	
North Vancouver	80 755	85 093	61 099	-5.8	-5.6	0.1	
Okanagan Centre	85 237	89 730	66 806	-0.6	-0.4	9.4	
Okanagan-Shuswap	78 211	79 074	53 603	-8.8	-12.2	-12.2	
Okanagan-Similkameen-Merritt	77 244	78 861	53 577	-9.9	-12.5	-12.3	
Port Moody-Coquitlam	83 959	93 180	67 800	-2.1	3.4	11.0	
Prince George-Bulkley Valley	87 992	86 178	48 547	2.6	-4.4	-20.5	
Prince George-Peace River	85 626	87 933	49 087	-0.2	-2.4	-19.6	
Richmond	96 154	108 492	72 868	12.1	20.4	19.3	
Saanich-Gulf Islands	92 551	100 510	77 506	7.9	11.5	26.9	
Skeena	77 697	74 309	41 567	-9.4	-17.5	-31.9	
Surrey North	90 110	107 052	71 877	5.1	18.8	17.7	
Surrey-White Rock	84 469	103 497	76 270	-1.5	14.9	24.9	
Vancouver Centre	99 262	104 346	82 107	15.7	15.8	34.5	

Table 1.A6 (cont'd) (1986–87 redistricting)

Constituency		Population	1	% devi	% deviation from quotient		
	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors	
Vancouver East	96 841	99 883	57 924	12.9	10.9	-5.1	
Vancouver Quadra	99 677	101 988	68 631	16.2	13.2	12.4	
Vancouver South	98 789	103 931	67 170	15.2	15.3	10.0	
Victoria	92 714	94 597	73 993	8.1	5.0	21.2	

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

1988 electors: Canada, Office of the Chief Electoral Officer. 1988 Report on the Thirty-Fourth General Election: Summary (Ottawa: Minister of Supply and Services Canada).

Table 1.A7
Enumeration and census populations for federal ridings: Prince Edward Island (1986–87 redistricting)

Constituency	Population			% deviation from quotient		
	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Cardigan	29 049	29 794	20 458	-5.2	-5.9	-8.6
Egmont	33 736	34 627	23 602	10.2	9.4	5.4
Hillsborough	30 473	31 832	24 252	-0.5	0.5	8.3
Malpeque	29 248	30 393	21 234	-4.5	-4.0	-5.2

Source: Constituencies based on 1981 census, 1987 Representation Order: Canada, Canada Gazette, 17 July 1987. Part I, extra no. 4, vol. 121 (Electoral Boundaries Readjustment Act: Proclamation of the Representation Order) (Ottawa).

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

Table 1.A8
Enumeration and census populations for federal ridings: Saskatchewan (1986–87 redistricting)

		Population			% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors		1981 census	1986 census	1988 electors
Kindersley-Lloydminster	66 631	69 883	42 916		-3.7	-3.1	-11.0
Mackenzie	67 396	65 469	43 435		-2.6	-9.2	-9.9
Moose Jaw-Lake Centre	69 225	69 635	46 211		0.1	-3.4	-4.2
Prince Albert-Churchill River	69 352	73 077	44 548		0.3	1.3	-7.6
Regina-Lumsden	69 230	75 760	50 066		0.1	5.1	3.8
Regina-Qu'Appelle	67 060	69 173	45 346		-3.0	-4.1	-6.0
Regina-Wascana	70 527	74 221	54 397		2.0	2.9	12.8
Saskatoon-Clark's Crossing	69 109	83 186	56 002		-0.1	15.4	16.1
Saskatoon-Dundurn	70 796	79 667	56 125		2.4	10.5	16.4
Saskatoon-Humboldt	67 391	69 187	50 434		-2.6	-4.1	4.6
Souris-Moose Mountain	70 760	71 558	47 304		2.3	-0.8	-1.9
Swift Current– Maple Creek–Assiniboia	70 264	69 027	45 168		1.6	-4.3	-6.3
The Battlefords-Meadow Lake	71 775	72 868	47 957		3.8	1.0	-0.6
Yorkton-Melville	68 797	66 902	45 251		-0.5	-7.2	-6.2

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

Table 1.A9
Enumeration and census populations for federal ridings: Alberta (1986–87 redistricting)

		Population		% devi	ation from (	quotient
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Athabasca	72 501	79 921	46 880	-15.8	-12.2	-21.7
Beaver River	68 200	72 694	43 320	-20.8	-20.1	-27.7
Calgary Centre	104 787	100 058	74 301	21.8	10.0	24.0
Calgary North	99 258	110 520	77 825	15.3	21.5	29.9
Calgary Northeast	93 075	109 649	67 065	8.1	20.5	11.9
Calgary Southeast	102 838	107 906	70 062	19.5	18.6	16.9
Calgary Southwest	94 531	109 305	77 198	9.8	20.1	28.9
Calgary West	98 319	98 661	69 650	14.2	8.4	16.3
Crowfoot	70 059	70 315	45 499	-18.6	-22.7	-24.1
Edmonton East	94 084	91 433	57 553	9.3	0.5	-3.9
Edmonton North	95 689	106 598	67 483	11.2	17.1	12.6
Edmonton Northwest	83 230	80 010	55 485	-3.3	-12.1	-7.4
Edmonton Southeast	87 348	102 512	65 007	1.5	12.7	8.5
Edmonton Southwest	89 417	103 293	70 987	3.9	13.5	18.5
Edmonton-Strathcona	92 224	90 136	67 962	7.2	-0.9	13.4
Elk Island	75 314	77 896	50 363	-12.5	-14.4	-15.9
Lethbridge	91 025	96 170	62 357	5.8	5.7	4.1
Macleod	66 014	65 664	44 076	-23.3	-27.8	-26.4
Medicine Hat	88 048	89 243	57 865	2.3	-1.9	-3.4
Peace River	99 542	104 721	61 055	15.7	15.1	1.9
Red Deer	86 971	96 957	62 470	1.1	6.6	4.3
St. Albert	75 603	82 993	53 853	-12.2	-8.8	-10.1

Table 1.A9 (cont'd) (1986–87 redistricting)

Constituency	Population			% deviation from quotient		
	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Vegreville	73 542	75 570	49 113	-14.6	-16.9	-18.0
Wetaskiwin	79 128	79 398	53 651	-8.1	-12.7	-10.4
Wild Rose	74 567	79 238	53 511	-13.4	-12.9	-10.7
Yellowhead	82 410	84 964	53 078	-4.2	-6.6	-11.4

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

1988 electors: Canada, Office of the Chief Electoral Officer. 1988 Report on the Thirty-Fourth General Election: Summary (Ottawa: Minister of Supply and Services Canada).

Table 1.A10
Enumeration and census populations for federal ridings: Newfoundland (1986–87 redistricting)

	Population			% deviation from quotient		
Constituency	1981 census	1986 census	1988 electors	1981 census	1986 census	1988 electors
Bona Vista-Trinity-Conception	89 559	89 907	61 770	10.4	10.7	12.5
Burin-St. George's	84 325	83 299	54 769	4.0	2.6	-0.2
Gander-Grand Falls	85 946	84 928	56 119	6.0	4.6	2.2
Humber-St. Barbe-Baie Verte	82 592	80 984	53 773	1.8	-0.3	-2.0
Labrador	31 318	28 741	17 318	-61.4	-64.6	-68.5
St John's East	104 416	106 299	74 765	28.8	30.9	36.2
St John's West	89 525	94 191	65 722	10.4	16.0	19.7

Source: Constituencies based on 1981 census, 1987 Representation Order: Canada, Canada Gazette, 17 July 1987. Part I, extra no. 4, vol. 121 (Electoral Boundaries Readjustment Act: Proclamation of the Representation Order) (Ottawa).

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

Table 1.A11
Enumeration and census populations for federal ridings: Yukon and Northwest Territories

(1986-87 redistricting)

Prov./ terr.		Population			% deviation from quotient		
	Constituency	1981 census	1986 census	1988 electors	1981 census		1988 electors
Yukon	Yukon	23 153	23 504	16 396	_	_	_
NWT	Nunatsiaq	16 973	19 952	11 392	-25.8	-23.6	-24.3
NWT	Western Arctic	28 768	32 286	18 721	25.8	23.6	24.3

Source: Constituencies based on 1981 census, 1987 Representation Order: Canada, Canada Gazette, 17 July 1987. Part I, extra no. 4, vol. 121 (Electoral Boundaries Readjustment Act: Proclamation of the Representation Order) (Ottawa).

1986 census population: Statistics Canada, *Federal Electoral Districts – 1987 Representation Order: Part 1* Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

Table 1.A12
Enumeration and census populations for federal ridings: totals and provincial quotients
(1986–87 redistricting)

	Population					
	1981 census	1986 census	1988 electors			
Provincial totals						
Ontario	8 625 107	9 101 694	6 309 375			
Quebec	6 438 403	6 532 461	4 740 091			
Nova Scotia	847 442	873 176	644 353			
New Brunswick	696 403	709 442	508 741			
Manitoba	1 026 241	1 063 016	729 281			
British Columbia	2 744 467	2 883 367	1 954 040			
Prince Edward Island	122 506	126 646	89 546			
Saskatchewan	968 313	1 009 613	675 160			
Alberta	2 237 724	2 365 825	1 557 669			
Newfoundland	567 681	568 349	384 236			
Canada	24 343 181	25 309 331	17 639 001			
Provincial quotients						
Ontario	87 122	91 936	63 731			
Quebec	85 845	87 099	63 201			
Nova Scotia	77 040	79 380	58 578			
New Brunswick	69 640	70 944	50 874			
Manitoba	73 303	75 930	52 092			
British Columbia	85 765	90 105	61 064			
Prince Edward Island	30 627	31 662	22 387			
Saskatchewan	69 165	72 115	48 226			
Alberta	86 066	90 993	59 910			
Newfoundland	81 097	81 193	54 891			

1986 census population: Statistics Canada, Federal Electoral Districts – 1987 Representation Order: Part 1 Cat. no. 94–133 (Ottawa: Minister of Supply and Services Canada).

# APPENDIX B DEVIATIONS FROM PROVINCIAL QUOTIENTS

Table 1.B1

Deviations from the provincial quotients based on enumeration and census populations: 1981 census

popular		. 150		1343												
1986–87			-30	-25	-20		-10	-5	0	5	10	15	20	25	30	
Redistrict 1981 Cer	~			to -20		to -10		to 0	to 5	to 10	to 15	to 20	to 25	to 30	to 	Total
Newfoun	dland N %	<i>1</i> 14.3	<i>0</i> 0.0	<i>0</i> 0.0	<i>0</i> 0.0	<i>0</i> 0.0			2 28.6			<i>0</i> 0.0	<i>0</i> 0.0	<i>1</i> 14.3	<i>0</i> 0.0	7
Prince Ed	tward	Island	d													
	N %	<i>0</i> 0.0	0	<i>0</i> 0.0	_	_	1 25.0		_	<i>0</i> 0.0	1 25.0	<i>0</i> 0.0	<i>0</i> 0.0	<i>0</i> 0.0	<i>0</i> 0.0	4
Nova Sco	otia															
	N %	<i>0</i> 0.0	<i>0</i> 0.0	<i>0</i> 0.0	<i>1</i> 9.1	<i>1</i> 9.1	<i>3</i> 27.3			<i>1</i> 9.1			<i>1</i> 9.1	<i>0</i> 0.0	<i>0</i> 0.0	11
New Brui	nswic	k														
	N %	<i>0</i> 0.0			<i>2</i> 20.0	<i>0</i> 0.0	<i>2</i> 20.0		<i>1</i> 10.0		<i>1</i> 10.0		<i>1</i> 10.0	<i>0</i> 0.0	0.0	10
Quebec																
	N %	1.3	1.3	<i>3</i> 4.0	<i>4</i> 5.3	<i>8</i> 10.7		<i>12</i> 16.0			<i>7</i> 9.3	<i>4</i> 5.3	<i>5</i> 6.7	<i>0</i> 0.0	<i>0</i> 0.0	75
Ontario																
	N %	1.0	<i>0</i> 0.0	4.0	<i>3</i> 3.0	<i>6</i> 6.1	<i>11</i> 11.1	<i>14</i> 14.1				<i>0</i> 0.0	<i>0</i> 0.0	<i>0</i> 0.0	0.0	99
Manitoba	l															
	N %	<i>0</i> 0.0	0.0	<i>0</i> 0.0	<i>0</i> 0.0	<i>1</i> 7.1			4 28.6	<i>4</i> 28.6	0.0	<i>0</i> 0.0	<i>0</i> 0.0	<i>0</i> 0.0	0.0	14
Saskatch	ewar	)														
		0.0	_	_	_	_	_	_	_	_	_		<i>0</i> 0.0		<i>0</i> 0.0	14
Alberta																
	N %	<i>0</i> 0.0												<i>0</i> 0.0		26
British Co	olumb	ia														
	N %	<i>0</i> 0.0												<i>0</i> 0.0		32
Province	s' tota	al														
	N %	<i>3</i> 1.0												0.3		292

#### DRAWING THE MAP

Table 1.B2

Deviations from the provincial quotients based on enumeration and census populations: 1986 census

1986–87		-100										of +/-! 15	5 perce	ent 25	30	
Redistrict						to					to		to	to	to	
1986 Cen														30	∞	Total
Newfound													_			
	N %	1 14.3	0.0	0.0	0.0	0.0	0.0	1 14.3	2 28.6	0.0	14.3	14.3	<i>0</i> 0.0	0.0	14.3	7
Prince Ed	dward	Island	l													
	N %	-	<i>0</i> 0.0										<i>0</i> 0.0		<i>0</i> 0.0	4
Nova Sco	otia															
	N %	<i>0</i> 0.0	<i>0</i> 0.0	<i>1</i> 9.1	<i>1</i> 9.1	<i>1</i> 9.1	<i>2</i> 18.2	<i>1</i> 9.1	<i>1</i> 9.1	<i>0</i> 0.0	<i>2</i> 18.2	<i>0</i> 0.0	<i>2</i> 18.2	<i>0</i> 0.0	<i>0</i> 0.0	11
New Brur	nswicl															
	N %	0.0											<i>2</i> 20.0			10
Quebec	A.1	0		0		7	0	40	0	40	0		_	•	0	7.5
	N %												<i>5</i> 6.7			75
Ontario	A.I.	0	0	0	0	0	40	47	00	0	-	0	0		_	00
	N %	3.0	2.0	3.0	6.1	6.1	13.1	17.2	23.2	8.1	7.1	3.0	<i>2</i> 2.0	1.0	5.1	99
Manitoba										_	4					
	<i>N</i> %		0.0			<i>1</i> 7.1							0.0		<i>0</i> 0.0	14
Saskatch																
	N %												<i>0</i> 0.0			14
Alberta																
	N %												<i>3</i> 11.5			26
British Co																
	N %												<i>1</i> 3.1		<i>0</i> 0.0	32
Provinces																
	N %												<i>15</i> 5.1			292

## 85 ONE PERSON, ONE VOTE?

Table 1.B3 Deviations from the provincial quotients based on enumeration and census populations: 1988 electors

1986–87 Redistric 1988 Ele	ting	to	-30 to	-25 to	-20 to	to	-10 to	-5 to	0 to				25 to 30	30 to	Total
Newfoun	dland														
	Ν												1 12.5		8
Prince E															
	N %	<i>0</i> 0.0	_		<i>0</i> 0.0								<i>0</i> 0.0		4
Nova Sco	otia														
	N %	<i>0</i> 0.0											1 9.1		11
New Brui	nswic	k													
	N %	<i>0</i> 0.0											10.0		10
Quebec										_		-			
	N %		<i>4</i> 5.3										<i>0</i> 0.0		75
Ontario															
	N %					10 10.1							<i>3</i> 3.0	<i>5</i> 5.1	99
Manitoba	ì														
	N %	<i>0</i> 0.0		<i>1</i> 7.1	<i>0</i> 0.0	<i>3</i> 21.4	<i>2</i> 14.3	<i>1</i> 7.1	<i>1</i> 7.1	<i>1</i> 7.1	4 28.6	<i>0</i> 0.0	<i>0</i> 0.0	<i>0</i> 0.0	14
Saskatch	newar	1													
	N %	<i>0</i> 0.0				<i>1</i> 7.1							<i>0</i> 0.0	<i>0</i> 0.0	14
Alberta															
	N %	<i>0</i> 0.0												<i>0</i> 0.0	26
British Co	olumb	oia													
	N %	<i>3</i> 9.4												<i>1</i> 3.1	32
Province	s' tota	al													
	N %	12 4.1											8 2.7		292

#### **ABBREVIATIONS**

Appeal Cases (U.K.) A.C. amended am. British Columbia Court of Appeal B.C.C.A. British Columbia Law Reports B.C.L.R. British Columbia Supreme Court B.C.S.C. chapter C. Canadian Criminal Cases, Third Series C.C.C. (3d) Canadian Labour Law Cases C.L.L.C. Criminal Reports, Third Series C.R. (3d) Criminal Reports, Fourth Series C.R. (4th) Dominion Law Reports, Fourth Series D.L.R. (4th) **English Reports** E.R. Lord Raymond (King's Bench) Ld. Raym. Ontario Court of Appeal Ont. C.A. Privy Council P.C. Revised Statutes of Canada R.S.C. Saskatchewan Court of Appeal Sask. C.A. Statutes of British Columbia S.B.C. Statutes of Canada S.C. Supreme Court of Canada S.C.C. Supreme Court Reports S.C.R. Supreme Court Reporter (U.S.) S.Ct. section(s) s(s). Statutes of Saskatchewan S.S. **United States Supreme Court Reports** U.S.

#### NOTES

This study was completed in April 1991 with a postscript added in August 1991. I thank Professors Kenneth Carty and Katherine Swinton who provided very helpful comments on an earlier draft of this study. I am indebted to Keith Heintzman of the research staff of the Royal Commission on Electoral Reform and Party Financing who collected the data and prepared the tables that appear as appendices to this study. Finally, I thank Jan Cox who has provided much support and encouragement.

- 1. The 1986 floors would be Nfld. 7; PEI 4; NS 11; NB 10; Que. 75; Ont. 95; Man. 14; Sask. 14; Alta. 21; BC 28; NWT 2; YT 1 (Boyer 1987, 1: 107–108).
- 2. The 1986 census populations of these ridings range from 19 952 to 32 286, and their 1988 enumeration of voters ranges from 11 392 voters to 18 721 voters. In a case examining the principle of proportionate representation between the provinces, Chief Justice McEachern noted: "So far as I can ascertain, representation for the territories has never been based strictly upon population" (*Campbell* 1987, 134).

- 3. In his concurring judgement, Estey J. expressed the similar view that "the Charter cannot operate to erase this provincial power under the Constitution" [p. 22] even though section 93 authorizes legislation "in a prima facie selective and distinguishing manner with respect to education whether or not some segments of the community might consider the result to be discriminatory. In this sense, s. 93 is a provincial counterpart of s. 91(24) (Indians and Indian land) which authorizes the Parliament of Canada to legislate for the benefit of the Indian population in a preferential, discriminatory or distinctive fashion vis-à-vis others" [p. 27].
- 4. For example, the Saskatchewan Court of Appeal stated: "If one constituency of voters, five thousand in number let us say, is entitled by law to elect one representative, while another, numbering ten thousand, is entitled to no more, then obviously it cannot be said each is being accorded their democratic rights. The rights of the latter are debased" (Saskatchewan Districting Reference 1991, 461).
- 5. On this point, McLachlin CJSC quoted the philosopher John Rawls, who argues that the requirement that a constitution be a "just procedure satisfying the requirements of equal liberty" carries with it as a principle of equal participation "the precept one elector one vote is honored as far as possible" (Rawls 1971, 221–22). On the theoretical context, see Roach (1990, 88 ff.).
- 6. Ironically, American commentators have noted that the strict equality required by the "one person, one vote" principle might not have been required if their voting rights jurisprudence had developed under either their due process or republican government clauses as opposed to their equal protection clause (Dixon 1968, 268).
- 7. Similar arguments that a strict "one person, one vote" standard ignores many qualitative dimensions of fair and equitable representation are made in Dixon 1968, chaps. 1 and 9.
- 8. Alan Stewart has criticized the American doctrine that emphasizes each individual's share of voting power as leading "to the nihilistic conclusion that except where an election is decided by one voter, an individual elector has had no true influence on the choice at all." Moreover, he goes on to make the telling point that under the American standard "an elector moved by redistribution from a district with a large population to a smaller one is supposedly better represented because he has a larger mathematical 'share' of his member. Yet if the move means that he is artificially excluded from his political community containing those sharing his local interests and served by his local institutions, he may feel himself to be much more poorly represented" (Stewart 1990, 359).
- 9. On the basis of the 1988 enumeration, Labrador had 17318 voters (see appendix A) while the ridings in the territories ranged from 11392 in vast Nunatsiaq to 18721 in Western Arctic.

- 10. R.G. Dixon has criticized the American courts for ignoring evidence of actual representation of interests in the legislature and, instead of concentrating on easily calculated mathematical measures, "centering on the population variance ratio which compares the two extreme districts and the fictional electoral percentage which is easily computed but which concededly measures no percentage of legislative control known to the real world of district pluralities and legislative politics" (Dixon 1968, 288).
- 11. In *Dixon* (1989a, 277), Justice McLachlin stated: "[W]hile the courts are not to enter the domain of policy underlying legislation, they are empowered and indeed required to measure the content of legislation against the guarantees of the Constitution." Similarly, the Saskatchewan Court of Appeal stated that districting "has become a justiciable issue for the courts, for unless a person can bring proceedings to protect his or her constitutional right to vote, such right can become an illusory [sic]" (Saskatchewan Districting Reference 1991, 457).
- 12. An issue beyond the scope of this study.
- 13. The Constituency Boundaries Commission Act, 1978, section 16, discussed in Saskatchewan Districting Reference at pp. 31 ff. The equal population standard was determined with reference to the population of Saskatchewan minus the population of its northern region, which was guaranteed two ridings under both the 1978 and 1986 legislation. Thus, the Saskatchewan Court of Appeal upheld traditional quotas for the sparsely populated northern part of the province but rejected new quotas on rural and urban representation.
- 14. I am indebted to Kenneth Carty, who clarified this point for me and provided this example.

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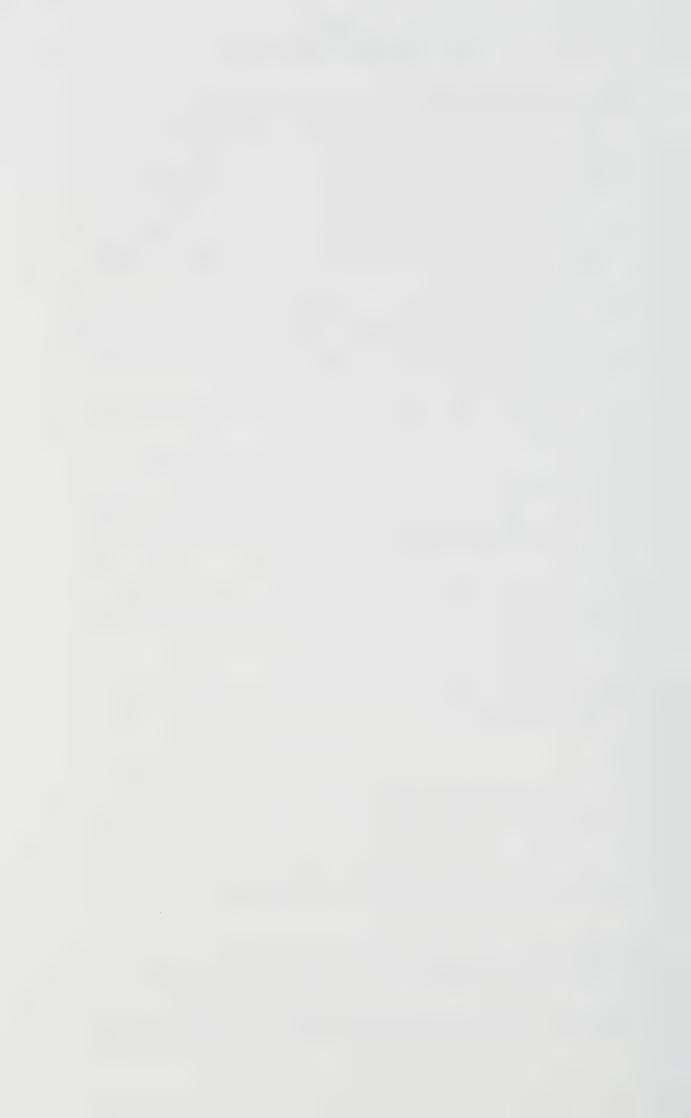
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# APPORTIONMENT, DISTRICTING AND REPRESENTATION IN THE UNITED STATES



#### Howard A. Scarrow

SHORTLY AFTER THE 1980 census, American political scientist Heinz Eulau (1982, 237) observed that "there is something immanently inconclusive about legislative districting, apportionment, and representation. The issues involved make for adversary proceedings and simply will not stand still."

The issues have indeed not stood still. In the United States, they have evolved in inexorable progression since first raised in the early 1960s. This study presents a brief review of that evolution, with the aim of illustrating the complexities and philosophical issues involved in the representation process.

Although the study focuses on the United States, the questions and issues raised are such that they can be discussed in the context of any pluralistic democracy. Where appropriate, therefore, the text occasionally draws comparisons between American and Canadian practices and experience.

The study begins with an examination of the arenas in which questions of apportionment and districting<sup>1</sup> have been decided – by the original constitutional convention; by the states; by the federal government; by the legislative branch; by the judicial branch. The report then describes the major court decisions rendered in the early 1960s which established the so-called "one person, one vote" principle and which set the direction of future court rulings. Subsequent cases, and the new perspectives on democratic representation which they raised, are then described. The final section deals with the subject which will occupy the

attention of the courts and political leaders in the decade of the 1990s, a subject which again confirms that the issues "simply will not stand still."

#### CONTROL OVER LEGISLATIVE APPORTIONMENT: FEDERAL GOVERNMENT OR THE STATES? CONGRESS OR THE SUPREME COURT?

**Apportionment among the States** 

The American Constitution, as ratified in 1788, contained specific formulae for determining the composition of the two co-equal houses of Congress. The historic "Connecticut Compromise" between the small states and the large ones allowed the Senate to be composed of two senators from each state regardless of population, with the senators themselves to be chosen by the respective state legislatures (Article I, section 3). In order to safeguard the formula for equal state representation in the Senate, the amending article (Article V) contained the proviso that no state could be denied equal representation in the Senate without its consent.

With the important exception of the change in the method of selection of senators, from election by state legislatures to election by state electorates (Seventeenth Amendment, 1913), the structure of the American Senate has remained unchanged. Most importantly, equality of state representation continues to be accepted as the legitimate heritage of the Founders' struggle to bring forth a new nation. In view of the fact that the Senate is the more prestigious and powerful chamber of Congress, this continued legitimacy is impressive. When new states are admitted to the union, their entitlement to two senators goes unquestioned, sparse populations (e.g., Alaska and Hawaii) notwithstanding.

The Constitution provided that the House of Representatives, in contrast to the Senate, was to be "chosen by the people," with the apportionment of House seats among the states to be determined by "their respective numbers" of persons as discovered by a decennial "enumeration" (Article I, section 2). The only qualifications to this strict population formula were: (1) a slave was to be counted as only three-fifths of a person; (2) "Indians not taxed" were to be excluded from the enumeration; and (3) every state would have at least one House member. When in 1911 the number of House seats became fixed at 435, the one escape for a state threatened with a reduction in its representation was eliminated. The occasional bills which have since been introduced to enlarge the House have failed to attract the required support.

The one attempt to alter the formula of interstate apportionment occurred after the Civil War with the enactment of the Fourteenth Amendment. Designed to ensure that the states of the old Confederacy granted the newly freed slaves their full rights as citizens, the Fourteenth Amendment (1) repeated the interstate apportionment formula, only now without reference to slaves being counted as three-fifths of a person; (2) mandated that every adult male citizen 21 years of age be given the right to vote, in both federal and state elections; and (3) specified a penalty for states which denied such persons the franchise, the penalty being a reduction in the state's representation in the House of Representatives in proportion to the number of persons so denied. Although Congress was given specific authority to enact legislation to enforce this penalty, the politically sensitive question of "states' rights," plus the difficulty of determining the number of deprived voters, prevented it ever from doing so.

Because of the Constitution's unambiguously strict population formula for interstate apportionment, plus the general acceptance today of the 435-seat limit, Congress has not become embroiled in controversies relating to the "proportionate representation" of states and regions in the House, as has Canada. Nor have the American courts been required to address that question as have the courts in Canada (as in *Campbell* 1988). No doubt the generous representation of the states in the Senate helps to explain this contrast. For example, when Alaska became a state in 1949 no one argued that, like Prince Edward Island, the new state should be given as many representatives in the House as it had in the Senate. Nor did anyone attempt to argue that because of Alaska's large land area and the attendant problem of citizen-representative access, Alaska should be given more than the one representative to which it was entitled by the Constitution's formula.

All this is not to say that the decennial interstate apportionments have been devoid of controversy. The question of how to count fractional remainders in determining a state's representation quota remained a subject of controversy until the present formula (the method of equal proportions) was adopted in 1941. And the accuracy of census counts has not always been accepted. After the census of 1920 the refusal of rural legislators to accept the accuracy of the census (which demonstrated that the nation had become largely urban in character) resulted in reapportionment being delayed for almost an entire decade (Congressional Quarterly 1985, 683–97), while in recent years it is the mayors of large urban areas who have claimed that their populations are being undercounted. But these disputes have centred on technique, not on basic principles of representation. Moreover, the mayors' complaints have arisen

not because the number of city members of Congress may be reduced due to census undercounts, but because millions of dollars in federal aid may be denied under urban assistance programs whose formulae are based on population numbers. The one controversy concerning interstate apportionment which has touched on basic principles of representation is whether noncitizens should be counted in the interstate apportionment base. This subject is dealt with in a subsequent section.

To summarize, in both the United States and Canada the historical roots of the apportionment debate can be traced to unequal representation between sparsely populated rural areas and the more densely populated urban areas, with the attendant slogans "rep by pop" and "one person, one vote." But in Canada that debate has occurred most conspicuously in the context of interprovincial apportionment, and it began early in the nation's history. In the United States, in contrast, that debate has occurred exclusively in the context of apportionment within the states, and the debate did not begin to attract national attention until the 1960s. Moreover, in the United States the debate has been waged most vigorously in the context of state legislative apportionment, rather than congressional apportionment.

#### **Apportionment of House Seats within a State**

In the United States the original Constitution specified that the states would determine the "times, places, and manner" of elections to the House of Representatives (Article I, section 4). Accordingly, unlike in Canada, the states themselves were entrusted with apportioning the House seats allotted to them. Although this grant of power regarding "times, places, and manner" was qualified by a clause which allowed Congress to enact its own overriding regulations, it was not until 1842 that Congress used this authority to require that elections to the House be from contiguous single-member districts, a practice already followed in most states by that time. In the same year, and also following each census from 1870 to 1910, Congress included in its interstate reapportionment acts a proviso that congressional districts should be "as nearly as practicable" equal in population. Congress could never agree to enforce these provisions, however, and their constitutionality remained in doubt (Schmeckebier 1941).

Deference to the states in matters of apportionment was in keeping with the spirit of the original Constitution. That document allowed the states to determine the franchise for House elections, in the sense that the franchise for those elections was to be the same as a state's franchise for its own lower legislative chamber. Likewise, the method by which a state chose its presidential electors was left to the states

themselves to determine. Whatever the reason, congressional reluctance to legislate in electoral matters continued to be in evidence following the passage of the Fourteenth Amendment in 1868, and the passage of the Fifteenth Amendment two years later. The latter amendment was aimed more pointedly at the states of the old Confederacy, requiring that no state deny a citizen the right to vote "on account of race, color, or previous condition of servitude." Like the franchise guarantee of the Fourteenth Amendment, the prohibition applied to both state and federal elections. Nevertheless, despite the fact that both amendments granted Congress specific authorization to enact enforcement legislation, not until 1957 did Congress begin to take advantage of this authorization. At that time it passed the first of a series of voting rights laws designed to protect the franchise of Black citizens. The 1965 *Voting Rights Act* is discussed in a subsequent section.

#### The Supreme Court

With Congress reluctant to assume jurisdiction over practices relating to either state or federal elections, it was left to the Supreme Court to limit the states' near exclusive jurisdiction in this policy area. Using the power of judicial review, the Court began by assuming jurisdiction in matters of the franchise, and then in the 1960s extended its jurisdiction to include matters of legislative apportionment as well.

The power of the Court to interpret the Constitution and to declare acts of Congress and the states unconstitutional was firmly established during the early years of the Republic. Under the guidance of Chief Justice John Marshall, the Court established itself as the final arbiter of what is constitutional and what is not. With the passage of the Fourteenth and Fifteenth Amendments this power was vastly increased. The Court could now declare unconstitutional state laws which curtailed the voting rights of adult male citizens, and more importantly the Court could enforce the Fourteenth Amendment stricture that "[no] State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." That prohibition – that a state shall deny neither "liberty" nor "equal protection" - opened the way for the Court to scrutinize state laws as they pertained to the whole gamut of individual liberty and individual equality. In 1925 the Court began to define exactly which "liberties" are protected by the Fourteenth Amendment by declaring New York's Criminal Anarchy law an unconstitutional violation of freedom of speech and press. By the end of the 1960s virtually all of the rights listed in the Bill of Rights, rights which were intended originally to be protected only against federal infringement, had become

"incorporated" into the Fourteenth Amendment and thus protected against state action as well.

Paralleling these decisions which defined "liberty" were decisions which declared as violations of the Fifteenth Amendment electoral laws in southern states which had the effect of denying the franchise to the Black electorate. Laws which excluded Blacks from participation in primary elections were declared unconstitutional as early as 1915, although it was not until 1944 (*Smith v. Allwright*) that the Court finally voided all the imaginative variations of the so-called "white primary" laws. In 1960 the Court extended its interpretation of the Fifteenth Amendment to cover not only the right of a Black citizen to cast a ballot, but also to be protected against a "racial gerrymander." In its *Gomillion v. Lightfoot* decision (1960), the Court nullified the attempt by the city of Tuskegee, Alabama, to exclude Blacks from elections through the technique of changing the city boundary lines to exclude them.

By 1960, then, suits brought by Black plaintiffs against southern states had laid the groundwork for court intervention in matters of elections for federal, state and local offices. The Fifteenth Amendment had provided the opening. But having defined the voting rights of Black citizens under the Fifteenth Amendment, the Court was faced with the question of why the voting rights of *all* citizens should not be protected under the Fourteenth Amendment. This tension between the Court's obligation under the Fifteenth Amendment and its options under the Fourteenth Amendment has continued to this day, being illustrated most recently in its 1986 decision regarding partisan gerrymandering (see following).

#### The Supreme Court and Legislative Apportionment

The Court's reliance on the Fifteenth Amendment to justify its intervention in Tuskegee's racial gerrymandering in 1960 was especially significant in view of the fact that 14 years previously it had refused to become involved in an apportionment suit brought by white plaintiffs in the state of Illinois. The complaint of these citizens was that the Illinois legislature had apportioned the state's congressional districts in such a way that one district contained 914 000 persons, while another district contained only 112 000 persons. The plaintiffs argued that such malapportionment violated their rights guaranteed by the equal protection clause of the Fourteenth Amendment. Although the facts of the case were undisputed, in a 4–3 decision (*Colegrove* 1946) the Court denied the plaintiffs' claim on the ground that the Court lacked jurisdiction in "political questions" of this kind; matters of legislative apportionment were not justiciable. Writing for the majority, Justice

Frankfurter reasoned that it was "hostile to a democratic system to involve the judiciary in the politics of the people," and he warned that the Court "ought not to enter this political thicket" (ibid., 553–54, 556). In 1960, when the same Justice Frankfurter wrote the majority opinion in the Tuskegee racial gerrymander case, he took great pains to cite the Fifteenth Amendment as his authority, not the Fourteenth; the Court could enforce racial equality in electoral matters, but otherwise it should not become involved in "political questions." Frankfurter's reasoning in both cases reflected the fact that, unlike Canada's current use of independent boundary commissions, in the United States the apportionment of both congressional and state districts is done by democratically elected state legislatures and governors.

Frankfurter's reasoning notwithstanding, by the 1960s the Court under Chief Justice Earl Warren had become more active in the protection of individual rights. Thus when a group of plaintiffs from Tennessee's urban areas came to the Court in 1962 to protest the apportionment of their state's legislature, whose two chambers featured population disparities as high as twenty to one in favour of rural areas, the Court reversed its 1946 *Colegrove* ruling. In the case of *Baker v. Carr* (1962), the Court held, in a 6–2 decision, that questions of legislative apportionment are indeed justiciable under the equal protection clause of the Fourteenth Amendment. Justice Frankfurter wrote a vigorous dissent, arguing that there is not "a judicial remedy for every political mischief, for every undesirable exercise of legislative power" (ibid., 270), and he warned that the Court was about to become bogged down in a "mathematical quagmire" (ibid., 268).

It was appropriate that the historic Baker v. Carr ruling should have involved the malapportionment of a state's legislative districts, not congressional districts. By 1960 population disparities in state legislative districts had become especially conspicuous. These disparities stemmed in part from the fact that many state constitutions specified counties or towns as the units of legislative representation with formulae which only partially reflected population size, and in part from states' failure to reapportion after every census. The massive population shifts which had taken place in the decade following the end of the Second World War served only to make population disparities more glaring. Accordingly, when the Court issued its two major "one person, one vote" rulings in 1964, the first involving congressional districts and the second involving state legislative districts, the impact of the latter was especially severe, as was the storm of protest which it aroused including an attempt to amend the Constitution in order to reverse the Court's intrusion into this traditionally protected area of states' rights.

#### The Initial Round of Court Decisions

The Court's first entry into the "political thicket" did not involve legislative apportionment, but rather the method by which Georgia elected its governor and U.S. senator. Under Georgia's county-unit method each county was treated as a unit and allocated a certain number of unit votes, all of which were to be cast for the candidate receiving the plurality of popular votes cast within the county. The plaintiffs complained that the number of unit votes allocated to counties did not reflect the size of county populations, so that a person's vote cast in the sparsely populated rural county was given more weight than a person's vote cast in a more heavily populated county. Agreeing with the plaintiffs that this system violated the equal protection clause of the Fourteenth Amendment, the Court, in the decision of Gray v. Sanders, articulated a reasoning which became the hallmark of its later legislative apportionment decisions (1963, 379, 381): "How then can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in a rural area [?] ... The conception of political equality from the Declaration of Independence to Lincoln's Gettysburg Address ... can mean only one thing – one person, one vote." The terms "one person, one vote" or "one man, one vote" were thus given birth, to achieve wide currency as a result of two Court decisions rendered in 1964.

The first decision, *Wesberry v. Sanders*, involved population disparities of congressional districts. The suit was brought by a resident of Georgia, where congressional district lines had not been altered since 1931 and where the most populous district had grown to be three times the size of the smallest. Now liberated from its 1946 Colegrove ruling, the Court found these disparities unconstitutional – although rather than citing the equal protection clause of the Fourteenth Amendment the Court cited Article I, section 2 of the Constitution which held that the House of Representatives shall be "chosen by the people." In rendering its 6–3 decision, the Court reasoned that the Constitution requires that "as nearly as is practicable, one man's vote in a Congressional election is to be worth as much as another's" (*Wesberry* 1964, 7–8). Such equality was achieved when all members of Congress were elected at large; but when elected by districts the equality of the worth of a citizen's vote can be achieved only when equal numbers of people reside in each district.

The second case, *Reynolds v. Sims*, involved population disparities of state legislative districts in Alabama. In this state the ratio of population disparity between the most populous and least populous state legislative districts was 46 to 1 in one house and 16 to 1 in the other. Citing the equal protection clause of the Fourteenth Amendment, the

Court ruled that the state must adopt equal population districts. The majority opinion, written by Chief Justice Warren, contained numerous passages which came to be quoted frequently in subsequent decisions. The right to vote can be affected "by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise" (*Reynolds* 1964, 555); "the weight of a citizen's vote cannot be made to depend on where he lives" (ibid., 567); and each voter has a right "to have his vote weighted equally with those of all other citizens" (ibid., 576). In this case the Court focused its attention not so much on the worth of a vote in a particular district as on the worth of a vote on a statewide basis. Its measure of that worth was whether or not districts which together contained a majority of the state population were able to elect a majority of legislative members. In Alabama, districts comprising only about 25 percent of the state population could elect a majority of each house.

The reasoning in both the *Wesberry* and *Reynolds* decisions focused on the "worth" of an individual's vote, and whether or not some individuals had their votes "diluted" by virtue of their living in overly populous districts. There was little acknowledgement of the qualitative aspects of representation, such as representation of communities, representation of divergent interests or citizen access to his or her representative. As Justice Frankfurter had predicted, what the Court was being asked to do in these cases was "to choose among competing bases of representation – ultimately, really, among competing theories of political philosophy" (*Baker* 1962, 299–300). The two decisions in 1964 made clear that the Court had chosen the theory of vote worth, vote value, vote power.

In his widely celebrated *Democratic Representation*, published in 1968, Robert Dixon argued that the Court's choice of representation theories was overly narrow; that it had mistakenly equated equal population with equal representation. He traced the problem to the 1963 *Gray* decision. The Georgia system of unit voting had indeed presented an instance of vote dilution, and in that circumstance the phrase "one man, one vote" accurately described the equality which was being denied voters in Georgia. Even better was the phrase used in the concurring opinion in that case – "one voter, one vote." But, Dixon argued (ibid., 181), the *Wesberry* and *Reynolds* cases were different. These were not "franchise" cases, but "representation" cases. They involved not a single district (the state), but elections in many districts. To argue that equality of district numbers will produce equal representation is to ignore the fact that districts are not homogeneous, but are composed of persons with different interests who vote for

different candidates. Winning candidates will take their places in the legislature, losing candidates will not. Rather than be concerned with the "worth" of a citizen's vote, the Court should have focused on another goal which Chief Justice Warren also identified in his *Reynolds* decision: "fair and effective representation for all citizens."

These same criticisms had been voiced by Justice Stewart in his dissents in two of the companion cases which accompanied the *Reynolds* decision. Recalling the composition of the United States Senate, Stewart doubted that California voters feel their votes are "debased" as a result of the constitutional formula which allows voters in Nevada to elect the same number of senators. As for state legislatures, Stewart argued, legislators do not represent "faceless numbers"; rather, they represent people with identifiable needs and interests. Accordingly, an apportionment scheme should be designed "to insure effective representation in the State's legislature … of the various groups and interests making up the electorate" (*Lucas* 1964, 749).

Supreme Court scholar Alexander Bickel was likewise critical of the Court's apportionment decisions, arguing that they seemed to be based on the premise that representative institutions are little more than "animated voting machines, engineered to register decisions made by the electorate." Such a theory of majoritarianism, he argued, reflects only one strain of the American "democratic creed," leaving no room for a legislature's "relatively independent, deliberate decision-making function" (Bickel 1965, 183).

Comparison with the Dixon Decision

Most of the criticisms levelled at the 1964 apportionment decisions do not apply to the decision rendered in Canada in 1989 in the case of *Dixon v. British Columbia (Attorney General)*. That decision clearly affirmed the importance of a country's historical traditions, and held that factors other than "faceless numbers" can be taken into account when legislative districts are designed. Moreover, the *Dixon* decision displays a kind of realism which is lacking in the American decisions. Thus it explicitly recognizes the various roles played by a member of a legislature, including the ombudsman role. It acknowledges that, in a parliamentary system, elections determine which party or coalition of parties forms the government, and cautions that gross population district inequalities could result in a government which does not reflect the partisan choices of the majority of voters.

The one major problem with the *Dixon* decision is that it frequently uses the term "equality of voting power" or its equivalent, suggesting that it is following the lead of the American courts in defining fair

representation in terms of the ability of the individual vote to affect the results of an election. If so, the decision is open to the same criticism that is levelled at the American decisions: that only an at-large election system can ensure vote-worth equality; and that in a district system the ability of a voter to determine the election outcome in any one district is far less crucial than is the partisan or other interest which prevails across all districts. However, the decision may be interpreted in such a way that the phrase "equality of voting power" is used not in its literal sense, but simply as a synonym for equal population districts.<sup>3</sup> It would be advantageous for future jurists to read the decision as referring to no more than that. With such a limited interpretation, the Court will not be tempted to focus on the opposite of the literal interpretation of "voting power," to wit, the notion of vote "dilution" or vote "debasement," concepts which, as shown below, the American courts have come to apply to racial and political groups. It should be noted that the Dixon decision uses neither the term "debase" nor "dilute" (nor their derivatives).

#### Consequences of the "Vote Worth" Perspective

The first result of the Court's taking a unidimensional, "vote worth" approach to representation was that it refused to allow any deviation from its application. This rigidity first became apparent when it insisted that both houses of a state legislature adhere to the "one person, one vote" principle, rather than allowing a state to follow the federal analogy and have one house represent territorial units of government (*Lucas* 1964).

The Court's rigidity also became apparent as it began to apply an increasingly strict definition of population equality. The original *Baker v. Carr* decision had contained the acknowledgement that "to some extent" such factors as respect for established communities could be taken into account when a state designed its legislative districts. Likewise the *Wesberry* decision contained the qualifier "as nearly as practicable." And the *Reynolds* decision acknowledged that population was "the starting point" for evaluating apportionment schemes. But as new cases came before the Court, the nonquantitative, difficult-to-measure factors gave way to the easier-to-measure equality of numbers. In 1969, five years after the initial *Wesberry* decision, the Court in a 6–3 decision held that a congressional districting plan adopted in Missouri which allowed a total variation of 5.97 percentage points violated the "one person, one vote" principle (*Kirkpatrick v. Preisler*). That is, one district's population was 3.13 percent above the ideal size (total population divided by number of districts), and at the other extreme the population of another district was 2.84 percent below the ideal size. Then in

1983 a divided Court (5–4) found unconstitutional a New Jersey congressional districting plan that contained a total variation of less than one percentage point (*Karcher v. Daggett*). In both cases the majority opinion, written by Justice Brennen (who also wrote the majority decision in *Baker v. Carr*), stressed that while the population variances were small, they could have been avoided, and they were not based on any acceptable explanation. It remained unclear, however, what explanations would be acceptable. In the 1969 ruling the Court explicitly ruled out as acceptable reasons a respect for the boundaries of political subdivisions or a desire to make districts more compact in shape. Yet in the 1983 ruling not only were these two explanations mentioned as being acceptable, but others were added to the list – e.g., avoiding election contests between incumbents (*Karcher* 1983, 2663).

Whatever may be acceptable to the Court, it is clear that the "vote worth" approach to apportionment has submerged other theories of representation which might have argued for the preservation of traditional geographic, community and political boundaries, or which might have recognized the advantage of districts of manageable size. Congressional districts are now totally artificial creations. As noted by Justice Fortras, one of the dissenting justices in the *Kirkpatrick* case, the standards of the Court may in the future result in a congressional district line being drawn down the middle of an apartment house corridor (1969, 538).

The contrast with Canada's allowance of plus or minus 25 percent (that is, 50 percentage points) is striking. That contrast might have been less vivid had Congress itself been allowed to set the standards. In 1965, after *Wesberry* but before the Court had begun to define apportionment standards, the House of Representatives passed a bill which would have established a 30 percentage point tolerance (15 percent above or below the ideal). However, the bill failed in the Senate.

It should be noted that the Court has not demanded exact precision with regard to the size of state or local legislative districts. It has acknowledged that for these bodies it may be necessary to depart from strict population equality in order that the boundaries of political subdivisions may be preserved, since such units of government are often charged with administrative responsibilities. Thus population variances as high as 16 percentage points have been approved (*Mahan* 1973), although 10 points is now considered to be the outside limit. Of course, by Canadian standards even that limit is extremely strict.

#### **Voters or Persons**

By casting its various decisions in terms of the rights of voters, not the rights of district residents or district citizens, the Court unwittingly

highlighted the problem of what should constitute the apportionment base. Should it be the total population of a district, as determined by the decennial census, or the district electorate, whether that be measured in terms of citizens of voting age, the number registered to vote or perhaps only those who actually regularly participate in elections? (Because registration in the United States is voluntary, it may drop to half or less of those otherwise eligible and actual turnout may be only a portion of those.) The Court simply assumed that "people," "residents" and "voters" were the same, and thus in its decisions used the terms interchangeably. It took no account of persons included in the census yet ineligible to vote, most notably those who are under age and those who are not citizens. (In establishing voter qualifications today, all states make citizenship a qualification for voting.) Of course, if such persons are distributed in even ratios across districts, the assumption that census counts will yield voter equality will cause no problem. But if they are not evenly distributed, the "one person, one vote" principle is violated no less than when the districts are unequally populated.

In the 1980s the distinction between the voting population and the census population became the subject of controversy because of the increased size and uneven distribution of the noncitizen population. Although the census bureau had always included the noncitizen population in the census counts it reported to Congress for apportionment purposes, by the 1980s the dramatic increase in the number of undocumented, so-called "illegal aliens" gave the question new urgency. Court suits were filed and bills introduced in Congress to have these persons omitted from the apportionment base. Among the arguments advanced by the proponents of change was the Supreme Court's reasoning that the votes of persons living in districts with a high number of noncitizens are worth more than the votes cast by persons living in other districts. Because the suits were dismissed on technical grounds, the Supreme Court never addressed the problem. Meanwhile, it is estimated that had noncitizens been excluded from the apportionment base in 1970 two states (New York and California) would have been allotted one less member of Congress, and two states (Georgia and Indiana) would have gained one seat each. It is estimated that five states will be affected as a result of including noncitizens in the 1990 census.

If the Court had adopted a broader view of the representation process, one which recognizes that elected representatives are often asked to act on behalf of all district residents and to provide services to all constituents whether they be citizens or noncitizens, voters or non-voters, its use of census counts for determining the apportionment base would

have been entirely appropriate. By focusing only on the worth of a vote, the Court left itself open to the charge that it was using the wrong data. Indeed, this is precisely the observation made by Mr. Justice Barwick of the Australian High Court when he reminded plaintiffs of that country that U.S. Supreme Court decisions could not be used to bolster their argument for the need for "one vote, one value" (*McKinley* 1975).

As noted above, the *Dixon* decision can be interpreted as not focusing on "voting power" in the literal sense of that term, and hence as not requiring that only the voter population be used in the design of legislative districts. Indeed, the fact that the decision found no significance in the distinction between *voter* size and *population* size, even though in the case at hand both methods for measuring district size had been used by British Columbia, would seem to provide additional evidence that the nonliteral interpretation of that decision which has been suggested here is the correct one.

#### Other Forms of Vote Dilution

Having defined fair representation in terms of *individual* vote dilution, the United States Supreme Court was soon presented with a claim for *group* vote dilution. Having begun in *Wesberry* and *Reynolds* defending the rights of the voting *majority*, the Court was now asked to defend the rights of a voting *minority*.

In a series of cases beginning six months after the 1964 *Reynolds* decision, the question raised was whether or not an at-large system of election diluted the votes of a racial minority. In one of these cases the state of Indiana had met the Court's equal population mandate by creating several multi-member districts – one in the city of Indianapolis having as many as 23 members – all elected at large. A group of Black ghetto residents argued that their votes had been "cancelled out" as a result of this voting scheme; Black voters were no longer able to elect candidates of their own choice as they had formerly been able to do with single-member districts.<sup>4</sup>

In contrast to its two major decisions of 1964, the Court now clearly acknowledged the realities of elections in a pluralistic democracy. In a single-member district system of election, the Court explained, one candidate wins and other candidates lose; in this sense the votes of the supporters of the losing candidates are indeed "cancelled out." Moreover, in multi-member district systems it is likely that groups – whether they be Republicans, Democrats, union workers, religious or ethnic groups – will often have their votes "cancelled out" in the sense that members of these groups might have been able to elect their preferred candidates had the election been held in single-member districts.

Although the Court acknowledged these truisms, it refused to declare at-large systems as such unconstitutional.

The Court did, however, leave open the possibility that it would rule that at-large election schemes violated minority voting rights if plaintiffs could discharge the burden of proving that such districts operated "to minimize or cancel out the voting strength of racial or political elements of the voting population" (*Whitcomb* 1971, 143), and that overall the group had less opportunity than other residents "to participate in the political processes and to elect legislators of their choice" (ibid., 149). In a case decided two years later (*White* 1973) the Court agreed that Black and Mexican-American plaintiffs in Texas had indeed met that standard of proof. Citing a long history of discrimination in the affected counties, the Court declared as a violation of the Fourteenth Amendment an apportionment scheme for the Texas House of Representatives which included multi-member districts containing Black and Mexican-American voters.

#### The Voting Rights Act of 1965

The Indiana (*Whitcomb*) and Texas (*White*) decisions were not the first to recognize the complexities of the representation process. In 1969 the Court had made a similar acknowledgement when it was asked to interpret section 5 of the *Voting Rights Act*. That law had been enacted by Congress in 1965, and was designed to remove barriers to Black voting participation in the south. Section 5 required counties covered by the Act – those which required a literacy test for voting and which had a voting participation rate of less than 50 percent – to submit to the Justice Department for preclearance any change in election "practice or procedure." In a decision rendered in 1969 (*Allen v. State Board of Elections*) the Supreme Court ruled that the phrase "practice or procedure" included not only such matters as registration procedures, but also districting plans, since these plans determine whether or not Black voters are able to cast an *effective*, *meaningful* vote resulting in their viewpoints being represented in a legislative body.

After 1969, therefore, those areas of the country covered by section 5 of the Act were required to submit to the Justice Department for approval their post-1970 districting schemes. As a result of these reviews, the Justice Department and the lower district courts began to order not only the dismantling of multiple-member districts, but also the creation of single-member districts purposely designed to include a majority of Black voters. The stated goal of these "affirmative gerrymanders" was to allow Black voters to elect their preferred candidates.

One of the early applications of an affirmative gerrymander involved

a state legislative district in New York City, parts of which were covered by the Act. The district had to be reconstructed in a way that destroyed a district which embraced a neighbourhood of Hasidic Jews. In responding to the complaints of these voters and others, the Court articulated a principle of representation which illustrated how far it had strayed from its initial *Reynolds* holding that equal numbers mean equal representation. The majority decision stated that where racial polarization exists, a "white" voter who happens to reside in a non-white majority district will be represented in the legislature by candidates elected in *other* white majority districts (*United Jewish Organizations* 1977).

It should be emphasized that when constructing an affirmatively gerrymandered district, American courts have explicitly recognized the difference between *voters* and *persons*. Because Black residents have been shown to participate in elections at lower rates than white residents, courts require that a district contain a 65 percent Black population to ensure that the active Black electorate – those who are of voting age (add 5 points), those who have registered in advance (5 points) and those who take the trouble to cast a vote on election day (5 points) – will be able to elect their preferred (presumably Black) candidate.

In Canada, if boundary commissions decide to construct districts composed of a majority of one of the groups enumerated in section 15 of the *Canadian Charter of Rights and Freedoms*, attention will have to be given not only to the participation rates of the group in question, but also to the type of apportionment base used. A government-prepared voter list may disproportionately exclude the group's members, while raw census counts may overstate the size of the group's eligible electorate.

#### Intent or Result

In 1980 the Supreme Court, now under Chief Justice Burger, appeared to overrule the *White* decision which had struck down the use of atlarge, multi-member districts in Texas. It introduced a distinction between discriminatory *intent* and discriminatory *effect*. The case involved the use of an at-large system for the election of city commissioners in the city of Mobile, Alabama. In its 6–3 decision (*Mobile* 1980), the Court refused to overturn that system on the ground that the plaintiffs had failed to show that it had been intentionally designed to discriminate against Black voters. The mere fact that a districting scheme *resulted* in a racial minority being excluded from the political process was not in itself sufficient to establish a constitutional violation.

Because the voting system in Mobile had been in place since 1911, section 5 of the *Voting Rights Act*, which covered only voting practices

introduced subsequent to the passage of the Act, did not apply. Thus the plaintiffs relied mostly on the Fourteenth and Fifteenth Amendments. However, the plaintiffs also cited section 2 of the *Voting Rights Act*, a section which, though little used up to that time, applied to the entire country. In its decision, the Court held that the "intent" requirement applied not only to the suits brought under the Fourteenth and Fifteenth Amendments, but to suits brought under section 2 as well.

Congress could not change the Court's interpretation of the Fourteenth and Fifteenth Amendments. It could, however, amend section 2 of the Voting Rights Act. It did so in 1982. Borrowing phrases from the White decision, the 1982 amendment outlawed any practice which, "based on the totality of circumstances," can be shown to result in members of a "protected class" having "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." By this time "protected class" referred not only to Blacks but, through a 1975 amendment, to language minorities also, most notably Hispanics and Native Americans. The amendment went on to say that among the totality of circumstances which may be considered is "the extent to which members of a protected class have been elected to office in the State or political subdivision ... : Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

With the passage of the 1982 amendment Congress, not the Supreme Court, took the lead in defining what was a fair districting scheme for all minority voters in the entire country, not just those living in the areas covered by section 5. The *Voting Rights Act*, rather than the Fourteenth and Fifteenth Amendments, became the major vehicle for racial and linguistic minorities to seek relief from having their votes diluted through either multiple-member or single-member districting schemes. (This dependence of the "effects" test on statutory law, rather than constitutional law, differs from the situation in Canada where the Supreme Court has applied the "effects" test to the protection of rights guaranteed by the Charter; for example, in *Andrews v. Law Society (British Columbia)* 1989.)

Yet the Supreme Court was still left with the task of interpretation. In a case decided in 1986, it established a three-part test for determining whether or not an apportionment scheme violated the revised section 2. First, a minority group must show it is sufficiently geographically compact to constitute a majority in one or more single-member districts. Second, the minority group must show that it is politically cohesive and votes as a bloc. Finally, plaintiffs must show that the nonminority

voters also vote as a bloc, with the result that the minority's preferred candidates are usually defeated. In the case in which this test was articulated (*Thornburg v. Gingles*), involving the apportionment of the North Carolina legislature, the plaintiffs were able to pass that test; accordingly, the Court ordered some multi-member districts dismantled and some single-member districts redrawn so that Blacks were able to elect greater numbers of their preferred candidates.

Despite the disclaimer in the Act regarding a minority's *right* to proportional representation, in the *Gingles* and subsequent cases the Court has considered as evidence – as section 2 specifically allows it to do – comparisons between the proportion of minorities in the population and the proportion of minorities among elected legislators. Perhaps not surprisingly, the four dissenting justices in the *Gingles* decision believed that the Court by its decision was establishing for minorities

a right to proportional representation.

The Gingles opinion and, especially, the vigorous Senate debate which surrounded the adoption of the section 2 amendment in 1982, richly illustrate two competing approaches to the problem of minority representation. Those who proposed the 1982 amendment advanced arguments similar to those advanced by the Court in the White decision. In those areas of the country where a history of discrimination against a racial minority could be documented and where, as part of that discrimination, minorities had been effectively barred from being nominated or elected to political office, court-ordered non-white majority districts were a necessary remedy. Opponents of the amendment advanced a different view of how minorities should be represented in a pluralistic democracy. Senator Hatch (United States, Congress 1982, 103) argues as follows: "Increasingly, we will be moving in the direction of providing compact and homogeneous political ghettoes for minorities and conceding them their 'share' of office-holders, rather than undertaking the more difficult (but ultimately more fruitful) task of attempting to integrate them into the electoral mainstream in this country by requiring them to engage in negotiation and compromise ... Minority representation in the most primitive sense may be enhanced by the proposed amendments; minority influence will suffer enormously."

Other critics have voiced similar concerns, but in terms of the choice of strategy. Should not the goal of minorities be to distribute their voting strength across several single-member districts so that they can provide the balance of power? Equally important, might not the concentration of minority voting strength in a single compact district result in the defeat, in surrounding districts, of candidates pledged to address minority concerns (Wells 1982; Thernstrom 1987)?

Nearly a decade after the passage of the 1982 amendment, defenders of the amendment (Parker 1990; McDonald 1990) argued that the prophecies of critics had not been borne out by events. They argued that the Act had not created racial divisions where none existed before, and that after hundreds of law suits – filed at the rate of over 200 a year and covering over a thousand units of government – the political process had been opened to minority voters and candidates, resulting in a dramatic increase in the number of minorities holding public office in the targeted areas.

#### The Dilution of Partisan Votes

Chief Justice Warren recognized in his *Reynolds* decision that the "one man, one vote" ruling might constitute an "open invitation" to partisan gerrymandering, since districting schemes could no longer be guided by boundaries of political subdivisions (*Reynolds* 1964, 578–79). As the Court increased its demand for mathematical exactness, the possibilities for partisan gerrymandering became even more inviting. It was only a matter of time, therefore, before the Court was forced to deal with the next extension of its concern with vote "worth" and vote "dilution." If votes of racial minorities could be diluted by districting schemes, so too could the votes of Republicans and Democrats.

Until 1986 the Court refused to be drawn into disputes based on that charge. The closest it came was in 1977, when it rendered a decision in a case where a bipartisan board had purposely designed a state legislative districting scheme to yield proportional representation of the two political parties. Defenders of the plan called it a "benevolent gerrymander," while its critics emphasized the "weird" and "grotesque" shapes of the districts. The question before the Court was simply whether the population discrepancies the scheme contained could be justified by the goal of seat-vote proportionality. The Court agreed that this was an acceptable goal, and thus allowed the plan to proceed.

The case of *Davis v. Bandemer*, decided in 1986, posed the more difficult question of what the Court should do about an invidious partisan gerrymander. Democratic plaintiffs in Indiana argued that the districting scheme for the state legislature had been deliberately designed by Republicans to dilute the strength of the state's Democratic voters. The effect of the scheme was that, whereas over 50 percent of the voters in the state voted for Democratic candidates for each of the respective houses of the state legislature, less than half the seats in each house were won by Democrats.

The most important component of the *Davis* decision was that six justices agreed that disputes of this kind are justiciable under the equal

protection clause of the Fourteenth Amendment – a position fore-shadowed by two justices in their concurring or dissenting opinions in *Karcher* in 1983. In this sense the *Davis* decision ranks in significance with *Baker v. Carr* in 1962, and like that decision *Davis* probably marks the beginning of a new round of court litigation once the post-1990 redistricting has been completed. It is by no means clear, however, how the Court will deal with these disputes. The plurality opinion refused to grant relief to the Indiana Democrats on the ground that one election result is not sufficient to sustain a claim of denial of equal protection. Something more is required of plaintiffs than the results of a single election and the proof of intent, but exactly what kind of additional evidence must be shown is by no means clear.

A strongly worded dissenting opinion written by Justice O'Connor, and concurred in by two of her colleagues, stated a fear which recalled Justice Frankfurter's dissent in *Baker v. Carr* in 1962. She argued that claims against partisan gerrymandering raised a "nonjusticiable political question," that there were no manageable judicial standards to guide the courts in these matters, and that as a result there would be "a gradual evolution of a requirement of roughly proportional representation for every cohesive political group" (*Davis* 1986, 2818).

#### CONCLUSION

It was appropriate for Justice O'Connor to refer in her opinion to Justice Frankfurter's warning in 1946 that the Court should not enter the "political thicket." By 1986 the Court had indeed travelled a long way from its initial "one person, one vote" ruling. The Court began by focusing on the rights of the individual voter, upholding the principle of majoritarianism and equating equal numbers with equal representation. Following that approach, the Court called for precise numerical equalities without regard to boundaries of established communities, and with no recognition of the role of an elected representative in providing services, or the role of speaking on behalf of all district constituents, voters and non-voters alike. Yet soon the Court extended its "vote worth" concern to include groups, especially minority groups, and moved from a concern with district size to a concern with effective representation. Congress moved the Court further in this direction when it passed the Voting Rights Act in 1965 and the amendment to the Act in 1982. Finally, following its own logic, the Court recognized the voting rights of another type of group, the supporters of a political party. The consequences of this latest entry into the political thicket remain to be seen.

Whatever the outcome, the only safe prediction for the decade of the 1990s would appear to be that the issues surrounding legislative apportionment, districting and representation "will not stand still."

#### APPORTIONMENT AND DISTRICTING IN THE U.S.

#### **ABBREVIATIONS**

A.L.R. Australian Law Reports

B.C.L.R. (2nd) British Columbia Law Reports (Second Series)

C.A. Court of Appeal H.C. High Court of Justice

Pub. Law Public Law S.C. Supreme Court

S.C.R. Supreme Court Reports

S.Ct. Supreme Court Reporter (U.S.)

s(s). section(s)

U.S. United States Supreme Court Reports

#### NOTES

This study was completed in May 1991.

- 1. The term "apportionment" (and its derivatives) will be used to refer to the decennial redistribution of seats in the House of Representatives among the states, as well as to the periodic redistribution of state legislative seats within a state. The term "districting" will be used to refer to the way the district lines are drawn once the population size of the various districts has been determined.
- 2. The author is indebted to Professor Kent Roach, Faculty of Law, University of Toronto, for his helpful comments on an earlier draft of this manuscript.
- 3. This interpretation is also suggested by the fact that the decision seems to use "equality of vote power" as synonymous with "rep by pop," "equality of numbers" and "voter parity."
- 4. Plaintiffs in the Indiana case claimed that at-large elections resulted in another form of vote dilution. The argument was made that, appearances to the contrary, multi-member districts do not meet the "one person, one vote" standard. Although it might seem fair to allot two members to one district and one to another if the first had twice the population of the second, in fact the power of each voter in the larger district (power being defined as the ability of one vote to break a tie outcome) could be shown mathematically to be worth more than a vote cast in the single-member district. Furthermore, inequality would result if all the at-large members voted as a bloc in the legislature. The Court rejected both arguments because of their alleged unrealistic or unsubstantiated assumptions. Nevertheless, these claims served to illustrate again the complexities of the representation process, and to recall Frankfurter's warning that the Court could become bogged down in a "mathematical quagmire."

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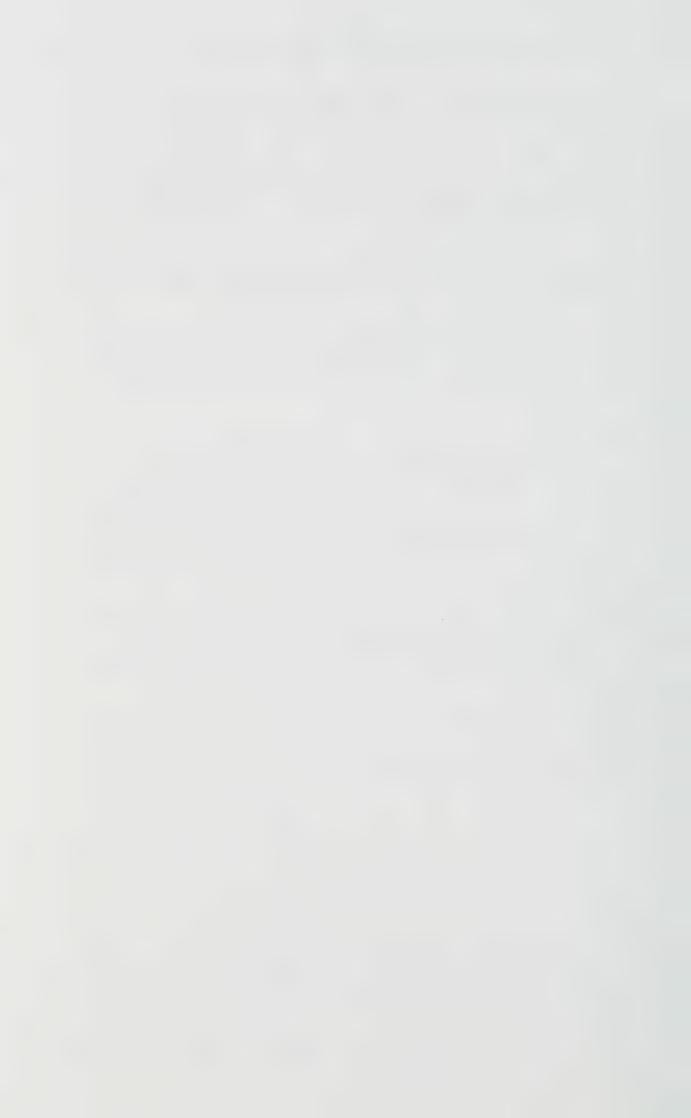
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# COMMUNITY OF INTEREST IN REDISTRICTING



#### **Alan Stewart**

#### THE IMPORTANCE OF "COMMUNITY" IN REDISTRICTING

OLITICAL REPRESENTATION IN Anglo-Canadian theory and practice has always been of communities – territorial units sharing, insofar as possible, some unity of interest. This principle of representation of community may be traced to the origins of Parliament as an institution (Beloff and Peele 1985, 160). Men were summoned by the King to represent a specific town or shire, and the House of Commons was simply the collection of such men. An individual town owed a certain set of duties to the Crown and benefited from a set of reciprocal obligations; these duties and entitlements had no necessary connection to those owed and enjoyed in the next town, whose Charter might be radically dissimilar. There would be no point in summoning a man to represent half of one town and one-third of another, for how could one man represent different and possibly conflicting things?

The great Reform Acts of 1832, 1867 and 1885 modified the representative principle of community to accommodate the principle of comparable population. Municipal units could not continue to be represented to a degree unjustified by their population, and communities with sufficient population could not be deprived of recognition by principles of "virtual" representation. It is sometimes said that the reforms of the 19th century transformed a system of representation of the community into one of representation of individuals (Birch 1964, 52), but this is inaccurate in both practice and theory. Because of the principle of comparable population, the base of representation is neither communities nor random groupings of equal individuals, but a

mix of the two. That the base is mixed may be seen in other rules of the representation system; e.g., in Canada provincial entitlements are not based solely on population and no electoral district crosses provincial boundaries. To recognize the need for equity in representation of groups of individuals, representation was given to artificially created communities – electoral districts – rather than to pre-existing communities as signified by municipal divisions. However, these districts were to be designed so as to reflect natural communities of interest to the greatest degree possible. Seymour's study of 19th-century reform demonstrates that uniform equality of electoral districts at the expense of municipal borough boundaries was rejected as undesirable (Seymour 1915, 499). To this day there remains a "tenacious belief that representation in the United Kingdom should in some way be connected with a coherent territorial unit and not simply based on the mathematical allocation of individual voters" (Beloff and Peele 1985, 160).

The current Canadian system is not designed for pure individual-based representation. A true shift from "community" representation to "individual" representation would require that individuals' choice of representative be unconstrained by their geographical location within the jurisdiction. This condition can be satisfied only if individuals are able to band together with others of their own choosing, drawn from anywhere in the jurisdiction, to select a representative.

This vision is most purely realized through Thomas Hare's 1859 scheme under which any group of electors equal to the representative quotient, anywhere in the United Kingdom, could unite to elect a member (Birch 1964, 63). Under such a scheme, where boundaries of physical communities are irrelevant, the individual is the sole base of representation and strict standards of population equality should perforce be observed. A pure individual-based system requires proportional representation. Modern plans provide more easily administered mechanisms for pure representation of individuals. Voters select, not a member from a local area, but an ideology from among those offered, with little way of expressing distinctive local concerns. However, to date neither Canada nor the United Kingdom has accepted such pure individual-based forms of representation.

Election in territorial districts implicitly assumes that geographic community is a legitimate aspect of representation because it makes a territorial community – the electoral district – the mediating link between the elector and his or her representation (Backstrom 1982, 47; Lucas 1964, 750). The boundaries of that community determine which candidate an elector may choose, although more favoured candidates may be running elsewhere. They determine which issues are likely to receive

concentrated attention from those candidates, although the elector may be interested in issues being fought elsewhere. They determine with which fellow citizens an elector may effectively combine in meaningful political work because active partisan participants will be organized according to their boundaries. Geographic districts cannot, of course, perfectly reflect communities of interest because some interests are dispersed widely among the population while others are concentrated, to a greater or lesser degree, in particular locations (Buchanan and Tullock 1962, 219–20). In view of the vital importance of constituency boundaries in the whole process of electoral choice, it is rational that the system of representation would attempt to have these artificial communities, created for a specific purpose, correspond as closely as possible to natural communities.

Community is also relevant because choosing electoral representation is a collective activity. In the view of G.D.H. Cole (1923, 106), in true representation, "what is represented is never merely the individual, but always certain purposes common to groups of individuals."

Whereas the importance of community in representation is generally accepted in Anglo-Canadian jurisdictions, in the last 30 years it has been more stressed in the United States than elsewhere, no doubt because previous American neglect of the principle caused its merits to be subsequently more fully recognized. Just as the importance of population was emphasized when American state legislatures were routinely malapportioned, the importance of community came to be recognized after the reapportionment revolution in the U.S. severely reduced the role of community of interest in redistricting.

In its first bloom, the reapportionment revolution was generally approved of because it asserted control over evident abuses such as states' adamant refusal, for decades, to redistrict in defiance of their own constitution. When the right of courts to correct abuses was finally recognized in Baker v. Carr, legal commentators such as Jerold Israel summarily dismissed the idea that the necessary control of such abuses would require a rule of undeviating population equality: "A court could not reasonably require the state to take one part of a town and include it in a voting district dominated by another town miles away, solely for the purpose of avoiding that inequality in representation which results from the rounding off of fractions" (Israel 1962–63, 117). Subsequently, the U.S. Supreme Court was to require just that, not on rare occasions but systematically. Three sets of cases mark the advance of equal-population doctrine. The 1964 reapportionment cases, of which Reynolds v. Sims was the chief, established that both houses of a legislature must be apportioned according to population and not by other

principles, such as equal or minimum representation for the federative units of a state. In 1969, the court held in *Kirkpatrick v. Preisler* that in congressional districting, considerations of community of interest (along with many others, such as use of eligible voters as base) could not justify deviations of as little as 6.0 percent between the populations of the largest and smallest district. The court further held that no deviation, however small, was *de minimis* (i.e., so trivial as not to warrant judicial concern). Any variation, however small, required justification and, as Justice Harlan noted, all natural principles likely to be cited in justification had been struck down. Although less severe rules were subsequently offered for state legislative districting, in 1983 the court affirmed the application of the *Kirkpatrick* principle to the round of congressional districting following the 1980 census.<sup>1</sup>

The first judicial interventions into districting were widely approved; however, the majority of experts had swung against rigid population standards by the time the effects of *Kirkpatrick v. Preisler* had revealed themselves in actual on-the-ground apportionments. By 1982 Carl Auerbach, an early legal proponent of judicial intervention, found cause to lament that he was left among the few similarly situated academics who supported the final doctrine of the reapportionment cases *in toto* (Auerbach 1982, 95). Probably the greatest cause for dissatisfaction was the rule's effect of requiring systematic disregard of communities of interest.

Robert Dixon, Jr., the dean of U.S. reapportionment experts, concluded that in cases such as *Kirkpatrick v. Preisler* equal numbers in each electoral district had simplistically been equated with the "equal representation" that the court had originally avowed to protect: "In the [1969] cases the court has talked frequently of a goal of "equal representation" but in practice it has borne down ever more heavily on the adjective and ignored the noun. Necessarily ... the new district lines cut across pre-existing county, city and town lines with great abandon, creating artificiality in districting ... Wielding one man, one vote, like a meat-axe, the court has not been content only to lop off extreme population malapportionment. It has come close to subordinating all aspects of political representation to one overriding element – absolute equality of population in all legislative districts" (Dixon 1971, 10–11).

Malcolm Jewell (1971, 46), analysing the Supreme Court's decisions in *Kirkpatrick v. Preisler* and *Wells v. Rockefeller* (1969), accused it of "an obsession with equality and a neglect of representation." Noting the Court's refusal to allow relatively small deviations for the purpose of following county and municipal boundaries, he argued that "residents of counties and cities have certain common interests and needs, and

their local governments must often seek the assistance of their state legislators in sponsoring and supporting legislation to deal with specific local problems ... It is important for legislators to represent the voters living in specific cities and counties, and not just those residing in particular census tracts" (Jewell 1971, 47). A second reason for following municipal boundaries was encouragement of citizens' awareness of their member's identity and activities: "If ... legislators are elected from districts that are unrelated to familiar city and county boundaries, they are likely to be even less visible to the voters [than at present]. The visibility of legislators is not a trivial problem, but is central to the functioning of a representative system" (ibid.).

David Mayhew (1971, 271), noting the continually declining percentage of Americans able to identify their member of Congress, argued that the forging of ties between representative and represented, a process essential to the continued vitality of democratic systems, is enhanced if members of Congress serve districts "that approximate communities ... that are in some sense communities [rather than] territories gathered together on a map by some other criterion." He suggested that a district that approximates a community has clearer interests than one that does not; the representative can more accurately discern these interests; once discerned, he or she can more truly embody them. From the electors' point of view, he suggested that "the communications linkage between congressman and constituents will be better if constituents are bound together by local associational ties" (ibid.). Mayhew argued that the system's response to malapportionment was "lacking a sense that districting can legitimately serve different values and that there are complex tradeoffs among these values. In judging ... redistricting ... it surely makes sense to ask whether the districts are roughly equal in population; it also makes sense to ask whether the districts display internal coherence" (ibid., 284–85).

Charles H. Backstrom (1982, 46), analysing Minnesota's 1972 court-mandated redistricting, noted that the false precision achieved by equalization of population according to census figures caused contorted district boundaries, emblematized when "pieces of municipalities had to be thrown into the next district ... single blocks were split or apartment complexes divided." Acknowledging that community of interest is difficult to operationalize, he concluded that in Minnesota it had been sacrificed: "Although the social or psychological boundaries of communities are not precise, they are real. People think of themselves as belonging together in counties in rural areas, in cities or sectors of metropolitan areas, and in neighbourhoods of central cities. This feeling is a clue to community, which is in turn the only rationale for geographically defined districts" (ibid., 47).

Lewis Dexter, considering the single-minded emphasis on "one man, one vote" among political scientists unreflective, recommended six principles of apportionment in addition to population equality, including recognition of natural communications areas, cultural and social groups, interests and traditional districts. Dexter suggested that a sense of political competence increases political participation, while knowledge of and about local candidates increases the sense of political competence. These factors would be encouraged when "people are part of a communications area in which politics is carried on" (Dexter 1968, 158), as opposed to being cut off from the core of their district and thus made remote from the electoral process. Maintenance of traditional boundaries was likewise valued as a spur to political participation, as habitual districts promote "such sentiments and traditions and feelings [as] are part of what makes political participation interesting and meaningful and worthwhile" (ibid., 164).

Charles Black suggested that the underlying assumptions of the strict one man, one vote rule were consistent with one of the essential functions of representation – equal participation in the making of policy – but at the expense of another – protection, particularly against the state, and especially of minority interests. The first function, considered alone, required a thoroughgoing equality of voting weight, but this very equality was inconsistent with the protective function of representation as conceived in "equal protection" terms: "The question, I should think, would have to be, not whether a particular electoral device is in itself altogether equalitarian, but whether the political system within which the device operates can be said, as a whole, to be affording "equal protection," by distributing voting power in such a way as to give adequate protection to all sections" (Black 1968, 138).

In some cases, recognition of the importance of community of interest has been realized through direct experience in redistricting, typically as a court-appointed special master charged with designing a plan in compliance with the strict population standards mandated by the courts.

Robert Bork's critical analysis of the constitutional doctrine of the reapportionment cases was reinforced by such an experience. In 1972 he was appointed by the district court to design a redistricting plan for Connecticut and was required to create districts with no criterion other than population equality, with a maximum deviation of only 1 percent from the average:

Given the merciless requirement of a 1 percent deviation per district, the disparities in population between census tracts, the inability to break the census tracts down further, and very uneven population concentrations across the state, the shape and size of electoral districts was determined by the corner of the state where we began work ... The rigors of arithmetic and the inadequacies of the materials we had to work with meant that the new districts utterly ignored geographical and demographic facts. Small towns were split into two districts, people on opposite sides of rivers were lumped into single districts. There was no help for it, but editorial reaction around the state was often furious. One editorial was headed "Bork's Fiasco." (Bork 1990, 88–89)

His conclusion from the experience was that concentration on population equality without consideration of other factors produced neither political neutrality nor true equality of representation.

Likewise, Richard Morrill, a political geographer required to produce a computer-assisted judicial redistricting plan, concluded that political geographers in general needed to avoid their traditional overconcern with the compactness of districts: "Geographers should be aware that the physical shape of a meaningful territory is of far less importance than its behavioral shape or sense of integrity ... Geographers should argue strenuously against dehumanization of political districts, not out of nostalgia or of resistance to equality, but because they know how important a sense of community is to participation and a sense of well-being" (Morrill 1981, 23). In the United Kingdom, attention has concentrated on the empirical importance of the representational element of geographic community as such. Peter Taylor and R.J. Johnston argue in The Geography of Elections (1979, 449-50) that the choice of an ideal electoral system (between single-member districts, proportional representation, the single transferable vote, limited voting, etc.) may depend on whether (territorial) constituencies are necessary, i.e., are they "real and therefore areas which require representation or ... merely administrative conveniences? ... [Are they] 'real' areas, whose constituents have common interests posing common problems for the member to solve?" Conversely, it may be inferred that a commitment to the effective working of our present system of territorial constituencies requires accepting all the implications of its assumed premises by ensuring that constituencies do represent such "real" areas with common interests.

Taylor and Johnston suggest that the intrinsic relevance of geographic community is supported by the fact that residential patterns are not themselves random. Voters are enumerated where they live. Where they live depends on the sectors of the housing market to which they have access, which depends on their affluence and various socioeconomic characteristics. These same criteria influence voters' attitudes and voting behaviour.

In addition, the local neighbourhood and its "pattern of social contacts may be a major element of the social environment within which voters make up their minds on how to vote" (Taylor and Johnston 1979, 23). This is the theory of the "neighbourhood effect" which claims that structural effects on voting decisions occur because local group or community values push the voter in one direction. Many studies have inferred the existence of a "neighbourhood effect."

Although Taylor and Johnston treated "neighbourhood-effect" theory with respectful caution in 1979, Johnston's subsequent study of the 1983 English election found "a clear-cut geographical pattern entirely consistent with the hypothesized neighbourhood effect" (Johnston and Pattie 1988, 119). He suggested that in Great Britain the pure influence of geographic community in the voting decision was increasing over time (Johnston 1985).

The neighbourhood effect is grounds for adhering to neighbourhood community boundaries in districting. If local patterns of social contact affect the voting decision, electors must find the type of information provided by these contacts to be useful in making that decision. These neighbourhood patterns would be disrupted if divided by electoral boundaries.

### **MODELS OF COMMUNITY**

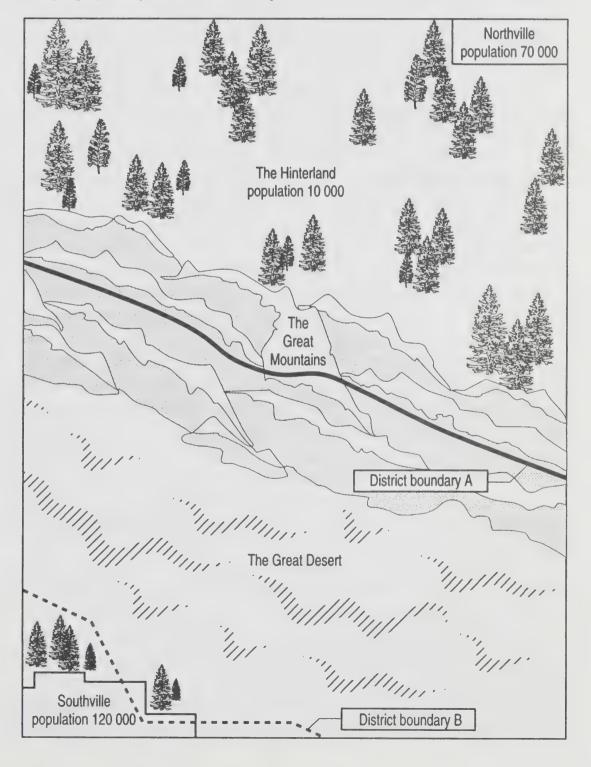
The rationale of the principle of community of interest is that electoral districts should be more than arbitrary, random groupings of individuals. They should be, as far as possible, cohesive units, areas with common interests related to representation. Existing districts and municipal boundaries should be respected where possible. The outer borders of the district should not divide distinct communities and neighbourhoods. Unrelated and geographically isolated areas should not be artificially attached to districts with whose "core" population they share no significant links.

In considering community of interest in representation, it may be useful to have some models of its application and importance. The competing argument for strict population equality has a number of typical symbols or emblems. Its slogan is "one person, one vote" – memorable and attractive in democratic appeal. Accompanying that slogan is the paradigmatic model of insufficient concern for population taken from the American experience – the large city, confined by malapportionment to a level of representation only one-tenth or so of

what it deserves, so that outlying rural areas can outvote its interests in the legislature, leading to neglect of urban needs.

Comparative examples of electoral abuse occurring where community of interest is ignored may be constructed. The first, illustrated in figure 3.1, is the geographically isolated community. The hypothetical jurisdiction has two dominant population centres, in opposite corners. Southville's population is 120 000; Northville and its

Figure 3.1
The geographically isolated community

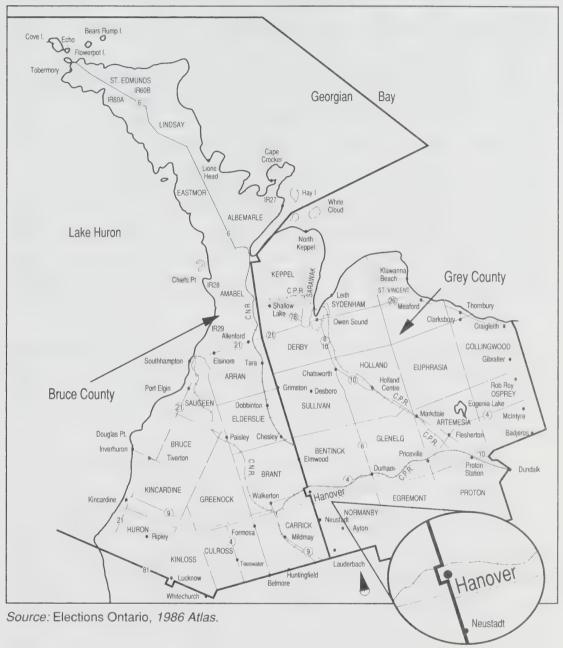


rural hinterland have a total population of 80 000. They are separated by imposing topographical obstacles – mountain and desert, so that the residents of the areas have little occasion for social intercourse of any kind. A strict population criterion requires that up to 20 000 residents of Southville be hived off by a boundary such as District boundary B. The affected residents are cut off from the political activity in the rest of their city, and added as a relatively small adjunct to a district with a population centre far distant, with no interaction with the majority of its residents and no access to the dominant communications media (television, radio, newspapers) that cover the district's issues and political activity. A boundary such as District boundary A would respect the natural separation and internal integrity of the areas.

Figure 3.2 illustrates a different problem of community of interest, "The Border Jurisdiction as Pawn." The example is taken from an actual case in the 1986 Ontario redistribution. Bruce County had a population of 60 020, and Grey County, 73 824. The average population of the two counties is 66 922, virtually identical to the electoral quotient of 66 347 applying in that redistribution. By shifting the town of Hanover, with a population of 6 316, the two districts' populations could be virtually equalized; however, the representations at the public hearings indicate no support for such an idea, neither by local residents nor by the notionally "underrepresented" residents of the remainder of Grey County, whose votes would supposedly be of more "value" if its population were reduced. The two counties together are getting only their just share of the total representation of the province - i.e., no "rural overrepresentation" is involved. If strict equal-population criteria prevail and Hanover is moved, its residents may wonder not only why their desired form of representation must be sacrificed, but who could possibly gain from such a shift? Whose right to equal representation is diluted by adhering to the requests of municipalities, voluntary organizations and citizens from Grey County and by respecting the county's territorial integrity? It is hard to conceive of any legitimate interest that is enhanced by such a shift, although it would lower the figure calculated for the redistribution on the "Gini index" and thus supposedly be a step toward "fairer" representation.

At redistribution hearings there are occasionally complaints from certain municipalities that their location at the periphery of a particular county leaves them having frequently to play the part of pawn in the "numbers game," doomed perpetually to be shifted from one riding to another to accommodate shifting population balances





occasioned by population growth and decline in areas far removed from them. As one representation stated:

We in Asphodel have been changed many times. We used to belong federally to, of all things, Hastings–Frontenac. Then we got back into the fold of Peterborough, and at last count we are now to be a part of Northumberland. It sometimes makes one feel like the illegitimate son at the family reunion. We get bounced around a bit.<sup>2</sup>

Likewise, a federal representation noted that a part of the city of Hamilton had been "used as filler material by both Provincial and Federal Redistribution Commissions."

The problem of Hanover is at least attributable to population imbalances in the immediate area. Figure 3.3 demonstrates how the application of strict population rules in one area can prevent adherence to community of interest in a whole series of districts because of the "ripple effect." The population of the jurisdiction is 570 000; the electoral quotient, 95 000. Counties B, C and D and City D all have populations of 100 000 and could stand as districts on their own. However, County A and City A each have populations of 85 000. Under a strict population regime, 10 000 residents of County A must be added to City A to create one district of 95 000. This leaves the remainder of County A (population 75 000) needing to have added 20 000 residents from County B to bring the district up to the quotient. The "ripple" spreads through Counties C and D and into City D, where 5 000 unlucky city residents must be added to County D because of population disparities at the other end of the jurisdiction. Six municipal and natural boundaries must be ignored to compensate for the demands of a strict population rule in City A.

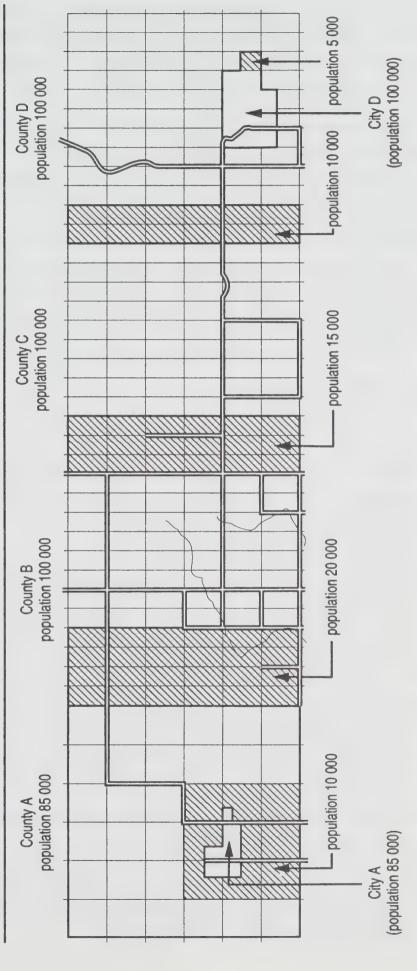
Other models illustrating the danger of disregarding community of interest, through the districting abuses of "cracking," "stacking" and "packing," are discussed later in this study in the section "Community of Interest and Population Equality."

# THE CONCEPT OF COMMUNITY OF INTEREST WITHIN THE STRUCTURE OF REDISTRICTING

No useful purpose can be served in beginning a study of the role of community of interest in redistricting by attempting to lay down a definition of it. According to Robert Gutman and David Popenoe (1970, 25), "the concept of community is undoubtedly one of the most ambiguous in sociology and, indeed, in all of the social sciences." George Hillery discovered 94 different definitions of the term in the relevant literature; that was in 1955 (ibid.). The ancient lineage of the concept may be demonstrated by Cicero's admonition: "A people is not any and all gatherings of men brought together in any way, but a gathering of many who are associated by agreement on law and by community of interests (*utilitatis communio*)." It is better, as John Ladd (1959, 269) argues, to treat the term "community" as a practical concept rather than as theoretical abstraction and to approach it instrumentally, by examining the concrete details of its use within a particular context. The first source of information is the relevant legislative instruments effecting redistricting.

In Quebec, the primary importance of community of interest is recognized in the statutory definition of an electoral division: "An electoral division represents a natural community established on the basis

Figure 3.3 The ripple effect of strict population equality upon community of interest



Shaded area = area that must be removed from the natural electoral district to satisfy strict population equality.

of demographical, geographical and sociological considerations, such as the population density, the relative growth rate of the population, the accessibility, area and shape of the region, the natural local boundaries and the limits of local municipalities" (Quebec *Election Act*, s. 15). The Commission de la représentation électorale du Québec (1990, 7) has interpreted this provision as "requir[ing] that electors cannot be arbitrarily brought together solely on the basis of a targeted total number."

In the United Kingdom, the primacy of community of interest is recognized through the structure of the statute, which creates a complex hierarchy of rules for boundary commissions to follow. The rules established by the Parliamentary Constituencies Act 1986 first specify a number of "municipal government" rules, such as "in England and Wales ... no county or any part thereof shall be included in a constituency which includes the whole or part of any other county or the whole or part of a London borough." A population rule is established requiring electorates to be "as near the electoral quota as is practicable having regard to the foregoing [municipal government] rules," but authorizing commissions to depart from those rules if necessary to avoid excessive population deviations from the electoral quota or among neighbouring constituencies. A "special geography" rule is then provided, allowing a commission to "depart from the strict application of the last two foregoing rules if special geographical considerations, including in particular the size, shape and accessibility of a constituency, appear to them to render a departure desirable."

Prevailing against all these, however, is the community-of-interest rule, originally subsection 2(2) of the *House of Commons (Redistribution of Seats) Act 1958*, now section 7 of schedule 2 to the *Parliamentary Constituencies Act 1986*: "It shall not be the duty of a Boundary Commission [in discharging their functions under the said section two] to aim at giving full effect in all circumstances to the ... rules, but they shall take account, so far as they reasonably can – (a) of the inconveniences attendant on alterations of constituencies, other than alterations made for the purposes of [the "municipal government" rules], and (b) of any *local ties* which would be broken by such alterations" [emphasis added]. "Local ties," then, is the British rendering of community of interest, and it is elevated above all other principles in the hierarchy, at least where "alterations of constituencies" are at issue.

The English Court of Appeal, in *R. v. Boundary Commission for England, ex parte Foot* (1983), noted that the design of the statute demonstrates that population equality is not the overriding objective of the Act, as was argued by the plaintiffs in the case:

Whilst we agree that Parliament attached great importance to each member representing more or less the same number of electors, this was not the only matter which it considered to be important. Parliament has also said that in principle constituency boundaries should not cross the boundaries of counties or of London boroughs. It has no objection to their crossing metropolitan district boundaries as such, but it has said that account must be taken of local ties and geographical considerations such as the size, shape and accessibility of a constituency. These factors, which go to the quality of representation, are often the very factors which led to the metropolitan district and other boundaries being where they are and may lead to a similar conclusion in relation to constituency boundaries.

It is important to realise that Parliament did not tell the Boundary Commission to do an exercise in accountancy – to count heads, divide by a number and then draw a series of lines around each resulting group. It told it to engage in a more far-reaching and sophisticated undertaking, involving striking a balance between many factors which can point in different directions. This calls for judgment, not scientific precision. (*Boundary Commission* 1983, 635)

In Ontario provincial redistricting, the importance of community of interest derives from the structure of the enabling instrument (in this case, a resolution of the Legislative Assembly of 16 June 1983):

for the purpose of the distribution the Commission shall take into account:

- (a) community or diversity of interests;
- (b) means of communication;
- (c) topographical features;
- (d) population trends;
- (e) the varying conditions and requirements regarding representation as between urban and rural Electoral Districts;
- (f) existing boundaries of municipalities or wards thereof;
- (g) the existing and traditional boundaries of Electoral Districts;
- (h) special geographic considerations, including in particular the sparsity, density or relative rate of growth of population in the various regions of the Province, the accessibility of such regions or the size or shape thereof; and *subject thereto* the population quota for each Electoral District shall be based on the average population ... (Ontario 1983, 97–98; emphasis added)

The resolution goes on to establish a maximum 25 percent deviation, which may itself be exceeded in exceptional circumstances.

Here districts are first to be established according to the constituent factors, including "community of interests," and only then is the population principle to be applied. The population principle is expressly subordinated to ("subject to") the other component factors of redistricting. In practice it is impossible to establish districts according to these criteria without the simultaneous consideration of population requirements, but the legislative imperative to adhere to community of interest is nevertheless clear.

Under the more common approach, the rule of population is established as fundamental and variations from it to a specified degree are allowed to accommodate community of interest. The federal statute provides first that district populations shall as close as reasonably possible correspond to the electoral quota for the province. It then provides:

- (b) the commission shall consider the following in determining reasonable electoral district boundaries:
- (i) the community of interest or community of identity in or the historical pattern of an electoral district in the province. (Canada *Electoral Boundaries Readjustment Act*, s. 15(1)(a))

The statute then specifically allows departure from the population rule, to a variation of 25 percent and larger in extraordinary circumstances, to respect the communities of interest and identity recognized in rule (b).

Saskatchewan's statute is distinctive in that it ensures that no factor be considered unworthy of consideration because it is deemed to fall outside any particular definition of "community of interest." Its commissions may use the allowable population variations to accommodate:

- (ii) any special geographic features, including size and means of communication between the various parts of the proposed constituency;
- (iii) the community or diversity of interests of the population, including variations in the requirements of the population of any proposed constituency; and
- (iv) other similar or relevant factors. (Saskatchewan Electoral Boundaries Commission Act, s. 20(b); emphasis added)

Thus, even if a definition of community of interest is established so as to exclude certain factors, a criterion falling outside the bounds may nevertheless be a "similar" factor.

Alberta's provision had been essentially similar to Saskatchewan's, except that consideration of the factors was mandatory ("The Commission ... shall take into consideration") as opposed to permissive (Alberta *Electoral Boundaries Commission Act* 1980, s. 19). In the new Act passed in 1990 a commission is required to consider "common and community interests and community organizations, including those of Indian reserves and Metis settlements" (ibid. 1990, s. 16(c)). Newfoundland's criteria place community of interest in the weakest position, in that consideration of the factors is permissive and it is only "any *special* community or diversity of interest" that is to earn it (Newfoundland *Electoral Boundaries Delimitation Act* 1973, s. 16; emphasis added).

The practices of redistricting in the United States do not ordinarily require systematic definition of community of interest because of the prevalence of open partisan and bipartisan gerrymandering there, although Vermont law requires redistricting consistent with the policy of "recognition and maintenance of patterns of geography, social interaction, trade, political ties and common interests" (Vermont Statutes Annotated 1903b). U.S. courts have occasionally had cause to review a particular districting plan for its adherence to community of interest. In Holt v. Richardson, the district court struck down a multimember apportionment plan because it failed to provide "substantial equality of meaningful representation to each and all of the voters of the state" by ignoring "ethnic, political, industrial, economic, social, occupational factors, and community of interests and problems" and "community of interest, community of problems, socio-economic status, political and racial factors" (1965, 728, 730). (The decision was subsequently reversed (1966) by the U.S. Supreme Court on an unrelated issue.) In Legislature of the State of California v. Reinecke a state court defined the "interests" in community of interest as "those common to an urban area, a rural area, an industrial area or an agricultural area, and those common areas in which the people share similar living standards, use the same transportation facilities, and have similar work opportunities, or have access to the same media of communication relevant to the election process" (Cain 1984, 63).

The first step in assessing the assigned role of community of interest in the structure of a statute is to consider its place in relation to the other factors, besides population, that are variously cited as redistricting criteria: existing districts, municipal boundaries, historical pattern,

topographical features, means of communication, size or shape of districts, community of identity, patterns of social interaction, etc. The federal legislation treats community of interest as the *basic* redistricting concept, with all the other factors cited above (except for community of identity and historical pattern) subsumed within it as component factors. At the other extreme, the Ontario provincial definition treats it as a *residual* concept, essentially filling whatever gaps may have been left within a long list of other, more specific criteria. Although it may be impossible to say which approach is "correct," a review of the functional role played by the concept suggests that the federal approach is more consistent with the demands of the process.

Bruce Cain (1984, 60–74) demonstrated in his study of California redistricting that the various "good government" criteria there (i.e., the ones recommended as an alternative to the prevailing system of open gerrymandering) inevitably conflict with one another. That is, municipal boundaries are to be respected, but ethnic community boundaries may straddle municipal boundaries; these ethnic community boundaries in turn may violate natural channels of transportation or those uniting areas of similar economic interests; districts accommodating these latter two factors may not be compact, and so on.

If conflicts between these factors are to be resolved, there must be some ultimate standard by which the competing claims can be compared. That standard must be community of interest, which requires the weighing of the subjective salience and objective importance of the various shared allegiances and values supporting competing boundary proposals. Values for this purpose may be considered not only in the sense of "beliefs," but in the economic sense. Common reliance on a particular industry or form of economic activity creates common "values" in the area affected; information and transaction costs imposed by a particular redistricting arrangement create common "values" among those affected. Thus, ethnic community boundaries should prevail over municipal boundaries only where they are more relevant to representation in the subjective judgement of the citizens, whereupon it may be said that they create a stronger community of interest. Topographical features are relevant to the extent that ignoring them would impose undue and unnecessary costs of transportation and communication among political participants, in their judgement, whereupon it may be said that a community of interest exists among the residents who would be disadvantaged.

The Canadian system of public participation through public hearings allows citizens to express these notions of community and requires commissions to weigh them – to assess which factors of community of

interest are most salient in a given area. Hanna Pitkin, in analysing the relation of the concepts of "representation" and "interest," notes that the latter word derives from the Latin *interesse*, meaning "to make a difference"; modern approaches to "interest" stress a subjective element, for "who but the person involved has the right to say whether he has anything at stake or not, we ask?" (Pitkin 1967, 157, 159). A process of public hearings allows redistricting to adapt to evolving beliefs about representation, for example, by being sensitive to such factors as increasing multicultural consciousness, at least where multicultural groups are geographically concentrated. Boundaries of multicultural communities in cities may be highly salient to some groups, less so to others. Public hearings allow commissions to respond to groups' actual views about such things.

Clearly, for the above reasons, the various components of redistricting other than population are better considered as subcomponents of community of interest.

## **COMMUNITY OF INTEREST AND POPULATION EQUALITY**

Recognition of community of interest is inevitably constrained by the principle of population. Within the Canadian system, in which the population of districts may deviate from the average by "plus or minus 25 percent," the constraint is somewhat loose. The strict view of population equality imposes a correspondingly strict constraint on the recognition of community of interest: In U.S. congressional districting, equality of population is the "privileged" factor in districting, the factor that "trumps" all others; community of interest can only be considered as a reason for preferring one of a number of alternative plans all offering equality of population to the same degree. Before the claim of privilege for equality of population can be accepted, the argument for equality of population must be demonstrated to be qualitatively different from the argument for community of interest.

As a Canadian constitutional right, the status of equality of population derives from section 3 of the Charter: "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." The existence of electoral districts with varying populations, on its face, does not infringe this right. Justice Frankfurter noted in dissent in *Baker v. Carr:* "Appellants invoke the right to vote and to have their votes counted. But they are permitted to vote and their votes are counted. They go to the polls, they cast their ballots, they send their representatives to the state councils" (1962, 300). The majority of the Court, in the reapportionment cases, held that this weaker version of the right to vote is not enough.

But what is the argument for the stronger version? Chief Justice Warren, in the famous paragraph from Reynolds v. Sims, derided the most common arguments for unequal districts: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests" (1964, 562). The first quoted sentence attempts to rebut the common argument that districts of large geographic size should be set at small populations in order to equalize electors' ability to have access to their representatives and vice versa. The argument being challenged should be regarded as separate from the "pure" community-of-interest case. The second quoted statement appears to be directly aimed at the community-of-interest argument. It is, however, open to criticism on two points. First, it is not self-evidently true. Legislators are elected by voters, but voters organized along geographic lines, voters living in farming areas or cities and limited in their choice of candidates by that fact, voters often acting according to their economic interest. More attention deserves to be paid to Justice Harlan's retort: "But it is surely equally obvious and in the context of elections, more meaningful to note that people are not ciphers and that legislators can represent their electors only by speaking for their interests - economic, social, and political" (ibid., 624). The second objection to Chief Justice Warren's formulation is that no direct connection is shown between equality of population in electoral districts and equal protection of the right to vote. That is, legislators are undoubtedly elected by people, but why is it important that they be grouped in exactly equal numbers, especially if they don't want to be?

Elsewhere in the reapportionment cases, however, more serious attempts were made to forge logical links between these concepts. In the judgement quoted above, Chief Justice Warren cites a previous dissent by Douglas J. declaring that the right to vote "includes the right to have the vote counted at full value without dilution or discount" (ibid., 555). Justice Black characterized the infraction against the Constitution as "debasing the weight" of some votes: "as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's" (Wesberry 1964, 4, 8).

What does it mean for a vote to have "full value without dilution" or to be "worth as much as another's"? The argument for exact equality of population demands that each individual's notional "share" of the power to select a representative be equalized. The right to vote is treated as a purely individual right, to be guaranteed as such. However, viewed in this way, the individual's mathematical "share" of the power to select a representative is insignificant. In two electoral districts, each with 60 000 electors, each elector has 0.0000166 of a "share" of the

power to select a representative. If this same area were redistricted into two districts with electorates of 50 000 and 70 000, an elector in the first district would have 0.00002 of a share, while an elector in the second district has only 0.0000142 of a share. It is hard to see the goal of the strict equal-population approach – the equalization of these shares – as anything but trivial; it is certainly difficult to appreciate why this goal should enjoy absolute priority over all other goals of the redistricting process.

The problem is with the conception of the right to vote as a purely individual right that can be protected by a formalistic rule without consideration of the collective nature of political choice. The individual vote is meaningless unless it affects the outcome of an election, i.e., unless a contest is tied or decided by one vote. Whatever the size of an electoral district, the chance of casting a meaningful vote in this sense is infinitesimal; it is probably more likely that the elector will be hit by a truck on the way to the polling place. 5 Your vote becomes meaningful only on the assumption that others in the same electorate share the same values, interests and concerns as yourself. Within the community there will be others who will respond to the stimuli of the campaign the candidates' appeals and arguments – in the same way as yourself, so that you together with them may have a chance of deciding the issue. If no other persons sharing such interests are in the same electorate the vote is indeed meaningless. The more such persons there are in the electorate, the more meaningful the vote becomes.

The strict equal-population right to vote carries a further contradiction. By concentrating on the individual's share of a group decision, it implicitly recognizes that the *effectiveness* of the vote is a component of that right. Thus, the American formulations speak of "vote dilution" – dilution of the *strength* or worth of the vote. Subsequent to the reapportionment revolution, American jurisprudence recognized that another form of redistricting abuse – drawing districts in a racially discriminatory manner – qualified as a form of vote dilution even where strict equality of population is required. Minority voting strength could be diluted by the redistricting techniques of "cracking," "stacking" and "packing" (Parker 1989, 87).

"Cracking" is the artificial division of an area of concentrated Black population among two or more districts with white voting majorities (Parker 1989, 89). The purpose is to disperse Black areas so that Blacks do not have the effective power to select a representative of their choice. In this century, Mississippi's heavily Black Delta was contained within one congressional district until 1966, a period when Blacks were disenfranchised. Once Black enfranchisement in significant numbers

began following the passage of the *Voting Rights Act*, the Delta was split among five white majority districts.

"Stacking," a closely related abuse, occurs where a smaller concentration of minority voters is added to a larger white area when it could have more naturally been added to the core of a second district that would then have a Black majority (Parker 1989, 92). The Black area is "stacked" harmlessly on top of the reliably white core.

"Packing" is when an unavoidably Black majority district has other unrelated Black majority areas added to it, so that control by minority groups is conceded in one district to avoid minority influence or control in a second district (Parker 1989, 96).

The United States Supreme Court, in a decision subsequent to the reapportionment cases, noted that control of abuses such as the above followed logically from the reasoning in those cases (*Allen* 1969, 589 per Warren C.J.). The reasoning requires that an elector's vote not be diluted by reason of belonging to a class of citizens – rural or suburban residents – with less effective power to select representatives than other residents.

Canadian systems of redistricting should be designed in consideration of the whole American experience. Respect for racial or ethnic communities in drawing boundaries is but one of the component factors of community of interest and it is interesting to note that the terminology used to describe racial districting abuses was originally designed to describe techniques used to devalue the votes of urban residents (Tyler 1962). Consideration of community of interest is a means of enhancing the worth of all votes. The State, by refusing to accord community of interest its proper weight in redistricting, countenances the dilution of the vote of the electors affected.

The corollary of this argument is that where strict equal-population criteria would curtail the degree to which community of interest can be recognized, one form of vote dilution is substituted for another. An optimal solution would maximize the worth of electors' votes by balancing the factors of comparability of population and community of interest. Automatic primacy of population guidelines compounds the evil they were intended to protect against. A pure equal-population requirement is thus inefficient in achieving its objectives.

In addition to the individual-right arguments for equal population discussed above, there is a "democracy-based" argument. If two areas have equal populations, but one has seven districts and the other has five, the area with seven districts will always be able to prevail over the area with five – a situation unacceptable in a democracy. However, note that where a group of underpopulated districts shares no interest

as against other districts, there is no opposite or competing interest to claim unfair treatment. Population variations dictated by community of interest do not discriminate systematically against any particular class of citizen. They do not dilute the franchise of urban residents, for example, because some city districts will be set at lower populations than the quota (to avoid adding a small rural adjunct) while some rural counties will be set at higher populations (to avoid unnecessary division of the district) (Stewart 1990, 360). The argument from democratic values may weigh heavily against other reasons for population variations, but not against community of interest.

Although a strict equal-population criterion is not efficient in creating equally effective representation, some standard must regulate population variations among electoral districts within a jurisdiction. The underlying concept must be one of "reasonableness," as in the Canadian federal statute. The concept of reasonableness includes within it the subsidiary component of "proportionality," requiring the weighing of factors that may be cited in support of a particular population variation, both for their intrinsic importance and in comparison of their strength in any given instance with other cases in which the same factors are cited. Geographic isolation would be created if a small part of an island were separated from the remainder and added to a mainland district. Avoiding that result may justify the maximum deviation within a jurisdiction. A less serious case, where equal population is departed from to avoid placing an area in Northern Ontario at the tail end of a remote, inaccessible district, might only justify a lesser percentage variation. Judging by the comparative weight of the factors, the isolation imposed in southern Ontario by a feature such as the Hamilton Escarpment is minor and could only justify a much lesser variation.

The application of informed judgement to many such arguments about numerous cases will produce a rule of proportionality. A graph of populations of districts formed according to such a rule will approximate a curve of normal distribution. The extreme variations, justified by extreme conditions, will be rare; more districts will have populations within 5 percent of the quota than in any other range of populations of equal size. This rule of proportionality is sometimes applied intuitively by observers testing the respect for population in a redistribution, who calculate, for example, the number of districts within 5 percent of the average. A statistical measure along such lines would be more probative than other measures currently used. The popularity of the ratio between the largest and smallest districts, sometimes called the Stewart-Davidberg Index, is undeserved because it considers only two districts in a jurisdiction: Where the highest and lowest populations in two jurisdictions

are the same, the index gives the same result in a jurisdiction where half the districts are at the high population and half at the low as it does in another jurisdiction where every district except the highest and lowest is exactly at the population quotient.

Another measure of population equality commonly used in the Canadian literature (Courtney 1988; Sancton 1990), the Gini Index, is more sophisticated but should not be used uncritically. With this index, complete equality of constituency population size is indicated by 0 and complete inequality by 1. The closer a group of electoral districts approaches 0 or 1, the closer it will be to perfect equality or perfect inequality, respectively (Courtney 1988, 680). This index is useful in identifying trends toward population equality within a jurisdiction; however, there is a danger that use of the index may lead to the undesirable practice of regarding the index as a sufficient measure of the quality of a redistribution. The index would be appropriate for that purpose only if no deviations from population equality were ever justified by community of interest – for example, if arguments for population variations were not stronger in some areas than others. A jurisdiction with a Gini Index of .060 or .070 might or might not have been redistricted so as to promote effective representation considering the requirements of the governing statute, depending on the degree to which the plan accommodated community of interest and reflected public participation. A redistribution with a Gini Index of .013, such as Saskatchewan (federally) in 1987, may very well have failed to give community of interest the weight that the statutory criteria of equal representation demand. There it was said that the conflicting arguments for population variations are irreconcilable (Canada, FEBC Sask. 1987). Yet the statute itself indicates the standards for reconciling these arguments, and it is to resolve these conflicts that quasi-judicial commissions exist.

An examination of the record of public participation through hearings is relevant to an assessment of whether present redistribution arrangements give sufficient weight to the factor of population. As Justice Frankfurter pointed out in *Baker v. Carr*, the strict equal-population doctrine is only one of many competing theories of representation (1962, 300). Hearings allow the public to express its views as to what changes in redistricting arrangements would enhance their representation.

As part of the investigation of indicia of community of interest discussed in the final section of this study, the 470 oral representations to the most recent Ontario federal and provincial hearings were considered. Each of the intervenors' recommendations was examined to determine whether it would result in movement *toward* or *away from* population equality in the districts affected. If the recommended changes

would move toward population equality as often as not, this would indicate that the commissions' first proposals (those being commented on at the hearings) could have been drawn with more concern for comparability of population without undue restraint of community of interest. Table 3.1 shows that 74.2 percent of the representations would have resulted in greater population inequality among districts; 14.3 percent of the representations would have resulted in greater population equality; and 11.5 percent would have caused no change in the population balance recommended by the commission. The provincial and federal findings are quite similar.

It is important to note that even the 14.3 percent recommending greater population equality were not *explicitly* requesting this; only 2 percent of the representations explicitly recommended that population equality be granted more weight as a factor. The remaining representations in this category recommended changes that would have had the effect of lessening inequality even though no such purpose was expressed.

The analysis indicates that, at least in the minds of members of the public who attend hearings, present redistricting procedures do not unduly impinge on the principle of population equality. Indeed the supply of "population equality" offered by commissioners vastly exceeds the demand.

Table 3.1

The effect of proposals by interveners at public sittings upon disparity of population among electoral districts

	1984 Provincial		1986 Federal		Total	
	N	%	N	%	N	%
Greater disparity	196	75.4	153	72.8	349	74.2
Lesser disparity	35	13.5	32	15.2	67	14.3
No change/no representation about boundaries	29	11.1	25	11.9	54	11.5
Total	260		210		470	

Sources: Calculated from Ontario, Ontario Electoral Boundaries Commission (1984b), and Canada, Federal Electoral Boundaries Commission for Ontario (1986b).

Percentages may not add to 100 because of rounding.

## COMMUNITY OF INTEREST AND POLITICAL PARTICIPATION

A common theme of representations to redistricting hearings is the advisability of avoiding the creation of districts that, by ignoring certain aspects of community of interest, will discourage political participation by people living within them. Given the importance of political participation within a democratic system, it is worthwhile to consider, theoretically and empirically, whether recognition of community of interest bears any relation to political participation.

There are two main approaches to the study of political participation (Burnham 1981, 100). The first seeks a demonstrably rational answer to the question: Why do people participate in political activity at all? Approaches to this question, generally following upon the work of Anthony Downs (1957), use techniques of economic analysis to explain political behaviour. Governmental activity is conceptualized as the distribution of "public goods," which can be analysed in much the same way as free market activity regulating the distribution of private goods.

Public-choice theory attempts to model the process of rational calculation by which people decide whether to engage in public participation, arguing that the ability of economic theory to predict and explain aggregate behaviour must be capable of transposition to the level of individual choice. The primary question inspiring this mode of inquiry is: Why does anyone vote at all? If the potential for accruing benefits from the activity of voting is dependent upon the probability of affecting the outcome of the election (an assumption consistent with the premises of the strict equal-population school), then the likely expected value of voting would seem unequal to the costs incurred. The costs consist primarily of the information costs in becoming and staying knowledgeable about the issues, as well as the opportunity costs of the time spent in ensuring that one is on the voters lists and in going to the polls. The challenge then is to particularize and replicate the calculation a rational person would make in deciding whether to engage in any act of political participation, including voting (Mueller 1979, 120). A potential voter's "decision function" may be described as R = BP - C + D, where R represents the voter's action (to vote or not, to gather political information or not), B represents the potential benefits forthcoming from this action, P represents the probability of these benefits occurring by reason of this action being undertaken, C represents the cost of the action (including direct costs and the opportunity cost, i.e., the opportunities for other actions that are forgone because this activity is undertaken instead) and D represents the private benefits complementary to undertaking the action. As Mueller notes (1979, 121), in the decision whether to vote "if P is the probability of a single vote being decisive, then it obviously must be very small in a large constituency."

Various hypotheses about the effect of a range of factors on voter turnout, as predicted by this model, have been tested by research. Riker and Ordeshook (1968), for example, have found that the closeness of an election was an important variable affecting voter turnout. The expectation of a close race had been predicted to increase the value of P in voters' decision functions by increasing the likelihood that a single vote would be decisive. (This in itself demonstrates the inadequacy of strict population assumptions that equalizing the voter's "share" of the district's population is the only factor that needs to be considered in ensuring an equally effective vote.) Tollison, Crain and Paulter (1975) argue that voter information as provided free by television, or through newspapers best explains voter participation. Easy access to information about candidates and issues reduces C, the cost of acquiring the information required to make a choice of a candidate.

Similarly, consideration of community of interest in redistricting may be hypothesized to affect voters' decision functions in a number of ways. To the extent that the district boundaries unite a voter with other people sharing the same interests or concerned about the same issues, the likelihood of one or more candidates coming forward whose election will benefit the voter will be greater. To the extent that boundaries unite communities served by the same television, radio and newspaper sources, media information will be more readily available, reducing the costs of acquiring the information necessary for making a voting decision. To the extent that boundaries reflect the existing boundaries of organized political and voluntary associations, political participants will, by their participation, reinforce and strengthen their pre-existing networks of social and political contact, thus increasing D, the private benefits enjoyed from political activity aside from those gained by contributing to the election of a member of their choice.

These hypotheses suggest that, according to the public-choice model, political participation in general, and voter turnout in particular, should be encouraged where redistricting considers community of interest.

The main alternative approach to the study of political participation relies on survey research to determine demographic characteristics that correlate with it. The characteristics that are ordinarily thought of as important correlates include race, socio-economic status, education and the like; the place of community of interest in redistricting in such analyses may not be immediately apparent. However, the research of Sidney Verba and Norman H. Nie upon community size as a correlate of participation suggests a possible link.

Verba and Nie considered competing theoretical models of the effect of community size upon participation. The "mobilization" model predicts increased participation in cities as opposed to smaller municipalities because of the effects of urbanization - more choice among forms of participation, more varied patterns of social interaction, greater likelihood of finding peer support, etc. (Verba and Nie 1972, 231). The "decline-of-community" model predicts lower levels of participation in cities as a more complicated, impersonal, remote politics replaces the comfortable, familiar politics of smaller communities where "citizens can know the ropes of politics, know whom to contact, know each other so they can form political units" (ibid.). The theory is that modernization shatters the cohesion of political communities: "What were once relatively independent communities ... no longer have clear economic borders as citizens begin to commute to work [elsewhere] ... they cease to be well-bounded political units as local services become more dependent on outside governmental boundaries" (ibid., 231).

Verba and Nie's initial analysis of the survey data, however, confirmed neither model. Exploring further, they suggested that by the logic of the "decline-of-community" model, what should be important is not the size of the community, but its "boundedness," defined as "the extent to which the community is a well-defined, autonomous [political, social and economic] unit" (Verba and Nie 1972, 233). The isolated small city of 50 000 cannot be lumped in the same class as the suburb of 50 000, which may be a distinct political unit but is socially and economically undifferentiated from adjoining parts of a larger metropolis. When the raw data were adjusted to eliminate the effects of sex, race and age, they conformed to the revised model, suggesting higher levels of participation in "isolated" (i.e., distinct) communities (ibid., 235–36).

Verba and Nie do not mention constituency boundaries at all. However, their analysis may be expanded to suggest that the enhancement of participation attendant upon living in a clearly "bounded," cohesive political unit cannot occur if that unit is divided by electoral district boundaries. The hypothesized participation-inducing factors – more knowledge about the "local" politics, information about public figures, low costs of acquiring political information and the sense of efficacy created by the autonomous status of the community – all disappear where the community is electorally divided into several parts, each an appendage of a constituency whose locus of control is far distant. The relevance of community of interest in redistricting is seen if the word "constituency" is substituted for "community" in the following quotation: "[high rates of participation are more likely] the more the community is a well-defined, autonomous unit (i.e., has a func-

tioning local government and is a meaningful economic unit where citizens live, work, shop, and have recreational, religious, and educational facilities) ... As a community loses its clear borders and identity, it should become more difficult or less meaningful for the individual to participate in it" (Verba and Nie 1972, 233, 240).

On the assumption, then, that the known effects on participation of living in a well-defined, cohesive unit with a sense of "boundedness" are in some way connected with the recognition of these units in redistricting, this alternative approach to political participation, like the "rational-actor" model, suggests that political participation in general and voter turnout in particular should be encouraged where redistricting considers community of interest.

One study supports the hypothesis indirectly by showing a strong relationship between community of interest and public recognition of, and ability to recall, the names of incumbent members of Congress and candidates. Niemi, Powell and Bicknel (1986) found that such recognition is enhanced when electors live within a municipality that is completely in one district, after controlling statistically for a wide range of other factors that increase candidate awareness. They suggest that U.S. courts grant more recognition to the role of community in effective representation.

A difficulty in empirical study of the hypothesis is in operationalizing community of interest. An approach to this problem was derived from study of the most recent Ontario provincial redistribution. The perennial tension between population and community of interest provides the key. If no population constraints existed, it may be hypothesized that all areas would be located within the district with which they shared the greatest community of interest, insofar as that can be ascertained. Population criteria prevent community of interest from being fully realized. Where boundary commissioners indicate that they recognize that a given area has a stronger community of interest with one electoral district but must nevertheless be placed within another, it may be said that the area's residents have been redistricted "against" their community of interest. The hypothesis is that the voter turnout in such an area will decline in the election after redistribution. The decline would not be expected to be marked, because any redistricting must consider competing communities of interest; the affected areas, then, would not be moved in total disregard of the concept.

Thirteen areas meeting the criteria in the 1985 redistribution were identified. Voter turnout was calculated for the elections of 1985 (preredistribution) and 1987 (post-redistribution). It is necessary to control for other effects on turnout, which increased in the province as a whole

between the two elections. The raw turnout in the areas was compared to the rest of the district, used as a control area, in the 1985 and 1987 elections. Table 3.2 shows the results. Turnout in the areas removed from the district with which they shared a stronger community of interest (the "affected areas") declined from 58.3 percent in 1985 to 57.1 percent in 1987. Turnout in the control areas increased by 1.2 percent, which is the same as the provincewide increase. The difference between the 1987 turnout in the affected and control areas is significant at p < .05 (p = .028). The difference between the changes in turnout considered as percentages are only significant at p < .10.7

The study provides some, if not overwhelming, evidence for a "community-of-interest" effect in turnout and suggests the utility of seeking other methods of operationalizing the concept.

## **URBAN REDISTRICTING**

In Canadian rural redistricting, in the jurisdictions here under study, local government units generally act as "building blocks," so that a district boundary rarely traverses the boundary of the smallest rural local municipality unit – in this case, the township. Urban redistricting may be considered as a separate category, for it frequently involves the drawing of boundaries that divide local government units, creating special problems in choosing particular boundaries.

The role of community of interest in urban redistricting may help-fully be considered in relation to urban studies in general. In urban planning, municipal governments must draw ward boundaries, zoning boundaries, planning areas, school catchment areas, etc. Urban planning, geography and sociology face the same issues that must be considered in redistricting – What is a "neighbourhood"? Is it important? What sizes of communities are appropriately considered as "real"

Table 3.2

Turnout in areas separated from their community of interest by redistribution compared to control areas

(percentages)

		Turnout	
	Separated areas	Control areas	All Ontario
1985	58.3	59.9	61.5
1987	57.0	61.1	62.7
Change	-1.3	+1.2	+1.2

Source: The Chief Election Officer of Ontario, Ontario Election Returns.

identifiable units deserving of recognition? Neighbourhood preservation programs, for example, may restrict land use (with substantial effect on property rights), based not only on elements such as strong physical boundaries, socio-economic characteristics of residents, and boundaries of other jurisdictions, but also on understandings of "neighbourhood" that depend less on hard data than on a finding that residents of a particular area share a certain "way of life" (Attoe 1979, 308).

Urban planning literature recognizes the same problems of data collection and analysis that restrict any attempt at a purely objective search for community of interest. Robert Beckley (1979, 96–98) differentiates between four types of data used by planners: socio-economic data, physical character data, community views and perceptions, and process-of-change information, with socio-economic data, such as the census data used in redistricting, the only "hard data" category of the four. Physical character data are mapped to attempt to isolate and describe the prevailing character of areas within the city, using categories such as "deteriorating structures," "predominant 2-storey duplex residential" or "mixed use." It is, Beckley notes, too often "primitive" in technique, lacking a common unit of analysis and relying on factors incapable of measurement. Community views and perceptions are commonly gathered at public hearings like those already conducted in the Canadian redistricting process.

The "neighbourhood," the basic unit of urban redistricting, is notoriously a subject of controversy in urban studies. A classical model identifies five elements characterizing a local community or neighbourhood that are capable of empirical testing, including well recognized historical names and boundaries, dividing lines recognized by local residents, and boundaries relating to those adopted by local organizations such as improvement associations and business groups (Burgess 1929, 47-66, particularly 58). Various degrees of confirmation have been found for neighbourhood models in particular areas, with a substantial group of theorists questioning the importance of neighbourhoods in urban areas (Webber 1970, 792; Hatt 1946; Jacobs 1961, 116). One of the points of cities, after all, is that people may pursue interests and seek associates from among the whole range of choices available throughout the metropolis, without being restricted to the choices available in the immediate locality. However, other researchers claim to show that "urban neighbourhoods exist as known, physically distinctive segments of the city occupied by broadly uniform groups of people" (Herbert and Johnston 1976, 6). Further, in redistricting, it is not necessary that "strong" conceptions of neighbourhood be valid for all parts of a city. If even some areas of cities are marked by some of the commonalities of identity and

interest characterizing the ideal "neighbourhood," then a responsive scheme of redistricting should take them into account.

Social-network theorists such as Claude Fischer, while recognizing the non-physical communities of interest that characterize urban life, argue that direct study of people's personal networks belies any assumption that physical neighbourhood is an unimportant factor in urban life: "Where people live can, to varying degrees, mold their networks, by shaping the pool from which they draw, and the ease with which they sustain their relations ... [Further,] people's personal networks influence their attitudes both directly – the kinds of people they know affect what they believe – and indirectly by selectively transmitting, interpreting, or blocking influences from the wider environment" (Fischer 1982, 5, 71).

In the same vein, Bonnie Erickson (1990) suggests that electoral boundaries should be drawn to follow the natural lines of cleavage between personal networks. She notes that the socially disadvantaged have weaker personal networks than the advantaged, making it particularly important to draw boundaries in a way that enhances their relevance. Likewise, as was confirmed by Fischer's research (Fischer 1982, 175), Erickson notes that the affluent have more geographically dispersed networks than the disadvantaged. For the practical determination of prevailing patterns of social networks for redistricting purposes, Erickson (1990) recommends three approaches, in descending degrees of utility but ascending degrees of practicality. Random sampling of citizens would determine geographic patterns of networks with great accuracy but at considerable cost. Patterns of local noncommercial telephone calls are alternative indicators of social network patterns. At considerable cost in accuracy, census data on socioeconomic characteristics are recommended as a proxy for findings of network research.

Once neighbourhood boundaries are determined after public participation, neighbourhoods must be combined into an electoral district in coherent units. Physical planners attempt to map the *image* of an area using a standard classification of "image-making physical features" first developed by Kevin Lynch (Witzling 1979, 190). The classification derives from empirical work seeking to define the "legibility" of a cityscape – the "ease with which its parts can be recognized and can be ordered into a coherent pattern." The elements of city imaging include edges, paths, districts, nodes and landmarks.

Edges are boundaries between two phases (of land use) marking linear breaks in continuity – barriers closing off regions, or seams joining and relating adjoining regions. Paths are channels along which residents customarily move, distinctive and notable features that do not mark off differing areas. Districts are medium-to-large sections of the city recognizable as having some common, identifying character. According to Lynch (1960, 67), "the physical characteristics that determine districts are thematic continuities which may consist of an endless variety of components: texture, space, form, detail, symbol, building type, use, activity, inhabitants, degree of maintenance, topography." Despite differences in use, adjacent districts may be grouped together by reason of architectural physical homogeneity or similarity of historical background. Nodes are strategic points such as junctions, crossings, convergences or concentrations of use. They may be "the focus and epitome of a district, over which their influence radiates and of which they stand as a symbol" (ibid., 48). Lynch's research demonstrates how these features combine to form the actual "mental maps" of city residents. However subjective these individuated mental maps may be, they affect residents' valuation of the attractiveness of areas, their preferred choices of routes and destinations for their social, recreational and economic activity.

Traditional redistricting methods seek such "natural" topographical features as rivers, bridges, highways and major arterial streets for boundaries. These features, as well as contributing to the easy comprehension of the limits of districts, tend to mark community divisions. Thus, it has been found that residents of "heavy-traffic" streets tend to confine their immediate social relationships to their side of the street whereas residents of "light-traffic" streets have relationships extending across their street and, when surveyed, typically draw their "home areas" as including both sides of the street (Friedman 1989, 270).

From another perspective, Jane Jacobs' analysis of the uses of city neighbourhoods offers some practical consequences for redistricting theory. Jacobs (1961, 114) regards city neighbourhoods as "mundane organs of self-government ... using self-government in its broadest sense meaning both the informal and formal self management of society." Jacobs, in considering what types of city subgrouping are viable and useful enough to be encouraged by public policy, asks what *size* of subgroups are likely to form viable units. Three types of groupings are envisaged: the city as a whole, the local street neighbourhood, and "districts of large, subcity size, composed of 100 000 people or more in the case of the largest cities" (ibid., 117). Of greatest interest for redistricting is Jacobs' theory of the "sub-city district," for it addresses an issue of great importance to urban redistricting: once local neighbourhoods are recognized, whether they be the "street neighbourhoods" described by Jacobs or the larger communities of 5 000–10 000 described by

traditional planning theory, how is it to be decided what groups of neighbourhoods should be associated with one another in an electoral district, and does it matter?

Jacobs conceives of a district as an organism mediating between the street neighbourhood and the city as a whole; the minimum size necessary for its existence is conceived directly in terms of votes – potential political power. A district, in order to sustain itself as an entity, must be "large enough to count as a force in the life of the city as a whole ... big and powerful enough to fight city hall" (Jacobs 1961, 122). Jacobs, describing political activity in New York City, states that where natural districts exist, community and political organizations based on the district evolve naturally because street neighbourhoods are too small to influence a member of the state assembly who has 115 000 constituents. From the vantage point of redistricting, the converse may be inferred; a scheme of electoral districts that divided a natural subcity district into separate shards, each too small to exercise any significant influence, would be ineffective in achieving its intrinsic purpose of organizing citizens into effective political communities.

Jacobs emphasizes that, although successful district organization is achieved through the hard work of citizen groups, the district has a natural existence: "Effective districts operate as things in their own right ... Districts are not groups of petty principalities, working in federation. If they work, they work as integral units of power, and opinion, having enough to count" (Jacobs 1961, 127).

The urban studies literature as a whole suggests the utility of public participation in determining electoral district boundaries. Even if local neighbourhood and community is less important in urban areas than classical neighbourhood theory would hold, the creation of coherent political units is enhanced where neighbourhood is recognized in cases where it is demonstrably salient to local residents.

## THE INDICIA OF COMMUNITY OF INTEREST

Although the subjective component of community of interest militates against attempting to formulate an exhaustive definition, it would be useful to know more about what creates community of interest (or reflects it, or indicates its existence). Representations made to public hearings about redistricting are useful empirical evidence. Returning to the language of the public-choice approach, representation may be considered as a "public good"; the public hearings serve as a kind of simulated market for the apportionment of it. The various participants have a direct incentive to seek to persuade the boundary commissions of the reality of that community of interest that seems most important

to them and they may be assumed to bring forward those indicia of community of interest that are most salient to them and most likely to have a persuasive effect.

To gain some insight into what indicia of community of interest are most important to the represented, the transcripts of the most recent public hearings in the province of Ontario (provincial, 1984; federal, 1986) were studied. Thirty-one indicia were isolated. Each representation was examined separately; every reference to each of the indicia was noted so that their frequency of mention could be calculated. The point is not to determine in an absolute sense which factors are more important than others. Some indicia, e.g., multicultural/ethnic community boundaries, may be highly salient where they are relevant, but may be relevant in only a few specific locales in the jurisdiction. The comparative frequency of mention of the various factors also depends on the degree to which the commission in question has already taken them into account in formulating its proposals, because representations are more likely to be made by people opposing a commission's proposals than by those supporting them. In addition, many representations simply assert a community of interest between one area and another, without attempting to "break down" the concept by specifying those particular characteristics that create the community of interest. Not coded at all were the numerous references to areas being "oriented to," "aligned with" or "naturally fitting with" other areas. Nevertheless, the frequency of mention of the categories may illustrate their relative importance in a general sense. In the following text the indicia are grouped in three loose classifications: criteria relating to boundaries, those relating to patterns of interaction and those relating to common characteristics. Frequency of citation - ranking relative to other indicia and percentage of total citations – is given in parentheses after the heading.

## **Criteria relating to Boundaries**

# Existing Electoral District Boundaries (1st, 30.6 percent)

This factor was the most frequently cited. Sitting members in particular may generally prefer minimal change to their districts, both to avoid unnecessary disruptions in their political organizations and to maximize the benefit of their incumbency in future elections; however, these motivations are not relevant to community of interest in particular, or the work of the commissions in general. Existing boundaries are relevant, not only because they were designed according to a previous commission's finding that they reflected community of interest, but because the enactment of a particular set of boundaries creates a

Table 3.3
Frequency of citation of indicia of community of interest

Frequency factor	Total mentions  N	Frequency of citation %	Provincial mentions  N	Frequency of citation %	Federal mentions N	Frequency of citation %
County/regional coundaries	118	25.1	71	27.3	47	22.4
ocal municipal/ vard boundaries	111	23.6	62	23.8	49	23.3
ransportation patterns	s 110	23.4	57	21.9	53	25.2
Oominant Opographical feature	96	20.4	47	18.1	49	23.3
listorical ties (not electo	oral) 96	20.4	53	20.4	43	20.5
ast pattern of boundar	ies 94	20.0	42	16.2	52	24.8
ocal neighbourhood	93	19.8	51	19.6	42	20.0
Rural/urban orientation	87	18.5	52	20.0	35	16.7
conomic ties (genera	l) 78	16.6	42	16.2	36	17.1
Shopping patterns	72	15.3	32	12.3	40	19.0
imilarity to other urisdiction boundaries	72	15.3	26	10.0	46	21.9
School catchment area	is 63	13.4	35	13.5	28	13.3
City-hinterland	55	11.7	26	10.0	29	13.8
conomic interest specific)	54	11.5	31	11.9	23	11.0
lewspaper catchment reas	51	10.9	33	12.7	18	8.6
elephone catchment reas	42	8.9	29	11.2	13	6.2
lecreational ties	42	8.9	20	7.7	22	10.5
lealth catchment area	s 42	8.9	24	9.2	18	8.6
Vork-residence atterns	39	8.3	23	8.8	16	7.6
Ethnicity	34	7.2	10	3.8	24	11.4
roadcast catchment reas	31	6.6	23	8.8	8	3.8
Reographic isolation	22	4.7	9	3.5	13	6.2

Table 3.3 (cont'd)

Frequency factor	Total mentions N	Frequency of citation %	Provincial mentions  N	Frequency of citation %	Federal mentions N	Frequency of citation %
Similar-size communities	18	3.8	14	5.4	4	1.9
Age of communities	16	3.4	6	2.3	10	4.8
Type of housing	16	3.4	5	1.9	11	5.2
Language	16	3.4	6	2.3	10	4.8
Social class/SES	12	2.6	3	1.2	9	4.3
Nodes within district	8	1.7	5	1.9	3	1.4
Religion	8	1.7	3	1.2	5	2.4

community of interest among those who participate in politics at any level (including voting) in that jurisdiction. Partisan constituency organizations are organized along these lines; voluntary associations and citizens seeking to influence public policy must organize themselves along these lines in order to influence members and candidates. The maintenance where possible of these established networks and channels of participation is a legitimate goal.

# County and Regional Boundaries (2d, 25.1 percent)

Adherence to boundaries of municipal subdivisions is one of the factors most commonly cited as contributing to community of interest. Depending on the density of population within the area to be districted, the level of subdivision containing the population corresponding most closely to that required by the electoral district may be the county or regional municipality in rural areas, the medium-sized city, or the city ward.

The county is important as a pre-existing, permanent political community. Citizens interested in local affairs must organize under the county frame-of-reference if their views are to prevail when the county takes its position, decides its priorities or makes its demands upon larger jurisdictions. School boards and teachers' organizations are typically organized along county lines, as are health boards and medical associations; thus, citizens interested in educational and health issues prefer that the ties and connections made at the county level continue

to be relevant in the selection and lobbying of the local representative. The same idea applies for farmers' associations dealing with agricultural issues, and so on. These interests and issues overlap to some extent. The ties and connections formed by cross-cutting networks of political participation are strengthened and made more meaningful if the county organization of these networks is recognized in provincial and federal districts; conversely, the ties formed by local political participation are weakened if county boundaries are ignored.

The 1987 federal commission adopted the following policy regarding these boundaries: "As far as population considerations allow, the commission has followed county, regional and municipal boundaries. Complete adherence to these boundaries is not feasible, because the populations of municipal units frequently do not fit the electoral quota" (Canada, FECB Ont. 1987, 7).

# Local Municipality or Ward Boundaries (3d, 23.6 percent)

Under this category were coded references urging that local municipality boundaries be respected. Where a city is larger than the size of an electoral district, adherence to ward boundaries is the corresponding means of respecting local subdivisions. The 1987 federal commission adopted the following position about these boundaries: "While the commission has tried to avoid splitting local municipalities (e.g., cities, towns, townships, villages), their division is sometimes necessary to avoid large population variations among adjoining districts. In large cities in particular it is often not possible to keep all districts within city limits without creating unacceptable population variations" (Canada, FECB Ont. 1987, 7).

The strength of the desire that electoral districts remain within city boundaries may be indicated by one example where a city administration, supported by citizens appearing, was willing to decline additional representation in order to maintain the integrity of city districts. In the provincial proposals, the city of Mississauga was allotted four and one-half districts – four entirely within its boundaries plus one formed of parts of Mississauga, Brampton and York Region. The city of Mississauga, in a representation by Mayor Hazel McCallion, strongly opposed the proposal. The city would have preferred five seats wholly within its boundaries, but as an alternative recommended four districts wholly within the city of Mississauga despite the notional underrepresentation that would ensue.

In the subsequent federal redistribution, the city was again in a similar position – in the words of the commission, "too populous to contain only three districts within its boundaries but not populous

enough for four" (Canada, FECB Ont. 1986a, 5). The mayor again made the argument for respecting the integrity of the city.<sup>9</sup>

In this case, however, no willingness to accept a smaller number of districts was indicated, suggesting that there is a trade-off point where the notional underrepresentation implied by high populations becomes real underrepresentation and outweighs the value accorded to maintenance of community of interest. Local citizens and groups should be better able to identify the location of this trade-off point than others, confirming the suitability of the public hearing process as a means of reconciling the factors of community of interest and population in preference to the establishment of an arbitrary equal-population rule.

#### Past Pattern of Boundaries (8th, 20 percent)

Under this category were coded references to past boundary alignments, before the redistribution in force at the time of the public hearings. Such references typically point to a continuous history of a particular set of boundaries, or a particular association of communities. These arguments may be viewed as an extension of the arguments for existing electoral district boundaries, demonstrating that the communities of interest created are stronger for having been in place for a long period of time.

Such arguments may be challenged where it can be demonstrated that the communities of interest that justified the past pattern no longer obtain. At the federal Ottawa hearings, a number of representations argued for the preservation of a district combining the townships of Rideau, Osgoode, Goulbourn and Nepean, as they had been combined since Confederation. However, the city of Nepean through its counsel, the Honourable Richard Bell, argued in favour of its separation: "Most of the residents of Nepean are newcomers since the mid-1950's arriving in considerable numbers each year as I shall mention later. They have little or no affinity, or loyalty to the old County of Carleton which I represented, and which has already been divided among five electoral districts. The historical pattern is that there is no longer any historical pattern to the electoral district as has been alleged."10 The representation continued to demonstrate that population growth and urbanization had cut the ties with surrounding rural areas that made the past pattern of boundaries appropriate.

#### Similarity to Other Jurisdiction's Boundaries (12th, 15.3 percent)

This category includes recommendations in favour of a particular boundary or alignment of districts on the grounds that it was similar to that adopted by the other level of government in its electoral districts. At the federal hearings, where the reference was to newly redistricted provincial districts (presumably more persuasive than districts awaiting redistricting and thus likely to change shortly thereafter), the factor was tied for sixth in frequency (21.9 percent).

A number of barriers prevent systematic correspondence between provincial and federal electoral districts, at least in Ontario. In this province there are 130 provincial districts and 99 federal, making it impossible to use the same districts on both levels. In many places the area occupied by three federal districts could be divided into four provincial districts, but the only boundaries exactly corresponding between the two levels would be those of the outer perimeter of districts. Under ideal procedures, both redistribution processes would be entering the same stage at about the same time, so that neither commission would want to use the old (and therefore likely to change) boundaries of the other level in formulating its proposals, and neither commission could know at its proposal or report stages what the final boundaries put into place at the other level would be.

Despite these impediments, occasions arise where correspondence between the two jurisdictions can be created at the "microdistricting" level, especially by the later commission of two working with a given set of census data within one jurisdiction. On rare occasions, redistricting criteria may justify coincidence between provincial districts at the high end of the population spectrum and federal districts at the low end. The provincial commission created a district of Sault Ste. Marie that was larger than the existing federal counterpart because of its view of the particular interrelation between the factors of community of interest and northern geographic accessibility dictated by its terms of reference (Ont. EBC 1984a, 8). Upon deciding to create four districts wholly within the city of Mississauga, the provincial commission was able to recommend in toto the districts recommended federally by the earlier Henry Commission, based on a "carefully prepared plan presented by city authorities and supported by numerous neighbourhood organizations" (ibid., 5). More frequent is the case where one portion of the boundaries of the two levels' districts is identical while the remainder of the boundaries diverge.

The argument for considering the alignment of districts at the other level of government is that maximum congruity between the two reinforces networks of political participation. Voluntary associations and their members can address particular issues more effectively if the boundaries of electoral districts reflect their organizational boundaries, and this reinforcing effect is strengthened if these boundaries are respected at both levels of government. Participants in provincial political activ-

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ity may be active in federal political activity more effectively and at less cost where constituency boundaries are similar, and vice versa.

#### Dominant Topographical Feature as Boundary (5th, 20.4 percent)

Under this category were coded references to dominant topographical features particularly suitable as boundaries. Such "natural" boundaries make electoral districts more comprehensible to the political participant. Placing a small area on one side of the boundary within a district on the other side may artificially isolate it from the main core of the district.

Topographic features may be either natural or constructed. Examples of natural features cited include Hamilton Mountain, Algonquin Park, and major rivers such as the Rideau, Don, Credit and Humber. Typical constructed features mentioned were limited-access highways and major arterial streets.

#### Street as Core (24th, 4.3 percent)

Some representations argued that a particular street that was an important arterial street with significant traffic flow and thus seemed suitable as a boundary, was unsuitable because of the similarity of interest of residents and merchants on either side. This argument was made in Toronto about St. Clair Avenue West (commercial interests) and Bathurst Street (Jewish community).

# Nodes within District (30th, 1.7 percent)

This category encompassed references to easily identifiable landmarks or centres of social interaction said to be a natural focus of some forms of activity throughout a district.

# Criteria relating to Patterns of Interaction

# Transportation Patterns (4th, 23.4 percent)

Under this category were coded representations urging that particular areas be associated with others because prevailing transportation patterns and available transportation corridors facilitated interaction between these areas. This factor was first in frequency of citation in the federal hearings (25.2 percent).

One member of Parliament expressed the link as follows: "In any rural constituency, the important thing is to have roads and transportation routes to the communities together. Highway No. 17 joins all the communities together up the Ottawa Valley, and other roads branching off this route lead to all other communities in the proposed riding

of Renfrew."<sup>11</sup> Thus, at the Sudbury federal sittings, the South East Sudbury Municipal Association opposed a proposed boundary alignment that would, for population reasons, place some of its municipalities in Timiskaming:

The [municipal] district is traversed by two major transportation routes, Highways 69 and 17. The average time required to reach the major service centre of the district, which is Sudbury, can vary between 20 minutes to  $1\frac{1}{2}$  hours. To the north of these municipalities, directly north lies hundreds of kilometres of uninhabited woodland ...

Since the beginning of our existence all of our communications have been with the closest centre such as Sudbury and North Bay. We have never dealt with Timiskaming or Haileybury or Kirkland Lake ...

Imagine if an elected representative came from Kirkland Lake ... It would be closer for him or her to go to Ottawa than it would be to come to Noelville. Even with the goodwill and the best intention, where would he find the time because there would certainly be very little time left to drive for hours because that is the only means of transportation to reach us.<sup>12</sup>

# Historical Ties (6th, 20.4 percent)

The argument for considering historical links between areas unrelated to electoral boundaries is that long-standing non-electoral interaction creates common interests that should be reflected in electoral representation.

# Economic Ties (General) (10th, 16.6 percent)

References to specific economic interests were coded in a separate category; this category covered more general references.

Economic connections between areas create economic interests. Where the economic health of the various parts of a region is seen as intertwined, certain issues become a matter of common concern and citizens prefer to have a representative with an incentive to address these issues, perhaps using a particular expertise associated with knowledge of the economic life of an area. To the extent that electors are "added on" to a constituency with which they do not have economic ties, they are denied effective opportunity of articulating their preferences about these issues through the established vehicles of political participation.

#### Shopping Patterns (11th, 15.3 percent)

Although commissioners may sometimes evince scepticism about the relation between favoured shopping locales and electoral district boundaries, this factor was tied for eleventh in frequency of citation. Some studies in local government restructuring have found the area within which "comparison shopping" is routinely carried out to be one of the best indicators of the limits of the hinterland of a large metropolitan centre (Hamilton–Burlington–Wentworth Local Government Review 1968, 22ff.). Shopping patterns are frequently used in urban sociology as measures of community orientation.

#### School Catchment Areas (13th, 13.4 percent)

This factor includes both references to local school catchment areas and to jurisdictional boundaries of boards of education. Urban planners, such as Clarence Perry, considered school catchment areas to be the central organizing factor of neighbourhood (Friedman 1989, 119). Education jurisdictional boundaries themselves create a commonality of interest relating to education issues.

#### City-Hinterland (14th, 11.7 percent)

Representations coded under this category recommended placing an area within a particular electoral district because it was naturally connected to a particular urban centre in its commercial, social and other relationships, i.e., that it was part of the urban centre's hinterland.

Two typical situations occur. In the first, a township might argue that it is connected in this way to a town or small city with a population in the 20 000–60 000 range, and should be included within its electoral district. Putting it elsewhere would put it in the hinterland of some other urban centre with which it had no connection, isolating the township within the district and disadvantaging its residents in comparison with the rest of the population of the electoral district that is more naturally connected together.

In the second, a township might argue that it formed part of the hinterland of a metropolitan centre. Although the metropolis would be large enough to form districts from wholly within itself, the township would argue that it should be placed with other parts of the hinterland, rather than in a district oriented toward a different metropolitan centre. Thus, the town of Strathroy argued at the provincial London hearings that it belonged in a riding with other areas oriented in every way toward London, rather than in a riding oriented toward Sarnia. <sup>13</sup>

#### Uniting Economic Interests (15th, 11.5 percent)

This category included all references to *specific* economic interests which, representations recommended, should be kept together. Typical interests mentioned were agriculture, tobacco farming, and tourism. Where such interests exist, residents of the areas concerned want to be placed together within a district so that citizens can choose among legislators with particular views on issues that relate to those interests. If the area were divided among many districts, such issues might be relegated to a position of unimportance.

Also coded under this category were references that urged commissioners to avoid uniting areas with directly conflicting interests. In this case, the argument is that a representative of such an area must, on numerous issues, choose one or the other. If the areas were in separate districts, each interest could have public articulation. Thus, a representative at the provincial Barrie sitting argued that development in the area could grow along either of two roughly parallel highways, and that placing the competing routes in the same district would create "a conflict of interest whenever a choice had to be made between [the] two corridors." Another example of this factor may be found in the 1987 report of the federal Newfoundland Commission, which concluded that "areas with a substantial inshore fishery should not be joined with areas having an offshore fishery" (Canada, FECB Nfld. 1987, 6).

#### Newspaper (16th, 10.9 percent) and Broadcast (22nd, 6.6 percent) Catchment Areas

Acquisition of political information is easier when residents live in an electoral district whose affairs are covered by the local media, as opposed to when residents are added on to an electoral district whose concentrated population is elsewhere and whose activities are primarily covered by media to which they do not have access. Media-coverage areas are considered to be significant indicators of community in urban studies generally.

# Health Catchment Areas (17th, 8.9 percent)

This factor was tied with recreational links for frequency of citation. The category included references to catchment areas of particular hospitals as well as to jurisdictional boundaries of health administrative units.

#### Recreational Ties (17th, 8.9 percent)

Recreational and cultural ties between areas were cited to suggest that the areas be joined in one electoral district.

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#### Telephone Catchment Areas (17th, 8.9 percent)

An electoral district that extends beyond the minimum number of local calling areas necessary to form the district in population numbers raises the cost of political participation. In urban sociology, patterns of telephone calls are considered important measures of interaction among areas.

#### Work-Residence Pattern (20th, 8.3 percent)

Under this category were coded references to the appropriateness of including an area with another because substantial numbers of persons resided in the one but worked in the other. These patterns are regarded as significant indicators of community of interest in local government restructuring.

#### Geographic Isolation (23rd, 4.7 percent)

This category includes references opposing proposed boundaries that would geographically isolate an area. Reference to geographic isolation was particularly common in Northern Ontario, where problems of accessibility are most pronounced.

Although unnatural geographic isolation is to be avoided, every community cannot be at the centre of a district; someone must be "at the end" or "in the corner."

# Criteria relating to Common Characteristics

# Rural or Urban Orientation (9th, 18.5 percent)

This category covers references urging that a particular area be united with another because it shared a rural or urban orientation as opposed to being attached to another area of the opposite orientation. Its intrinsic importance may be greater than its frequency of citation suggests because it is only likely to be cited where there is a perceived possibility that a commission may combine rural and urban areas in the same district.

The argument for this factor is that where an electoral district is predominantly of one orientation, a small section of it with another character will tend to have its particular interest and issues ignored. Its residents will be handicapped in effective political participation in the institutions and activities of the electoral district. In the words of a representation by the Lochiel Township: "Ours is a rural township in the eastern-most corner of the province in the County of Glengarry. If amalgamated with the City of Cornwall, whose needs and priorities, naturally, have no similarity with those of our ratepayers, [this] would

result in our township's agricultural community not being represented or heard."<sup>15</sup>

Where the two segments to be joined are of comparable size, the argument concentrates on the inability of the district to be a real, "coherent" unit with an understandable identity. Thus, the city of Windsor argued against a provincial proposal that would "unnecessarily create a district of mixed rural and urban population and basically vastly disparate and conflicting constituent problems":

Basically we are concerned about the proposed riding of Windsor–Sandwich. It encompasses vast rural areas in Sandwich West and South, fragments of scattered residential development [, the] Sandwich community on the west side of Windsor, one of the City's oldest and historic areas and for which the district is apparently named, and the district appears to have no unique characteristics. It is not suburban. It is not rural. It cannot be defined by any geographical denomic [?] or handle and doesn't seem to exhibit a commonality of problems.<sup>16</sup>

Occasionally, where a city and its rural surroundings are highly integrated politically and economically, an argument will be made for creation of a mixed district or mixed districts on the grounds that the ties between the hinterland area and its core are more salient than the distinction between urban and rural. Thus, representations at the federal Ottawa hearings recommended districts designed in a "hub-and-spoke" pattern, so that rural areas would be connected with the section of metropolitan Ottawa with which they had the strongest transportation, economic and social connections.

This issue crops up in other jurisdictions. The English boundary commission has held discussions with the political parties over the appropriateness of dividing areas into "Polo-Mint" constituencies, where a central urban constituency is wholly surrounded by a rural constituency, as opposed to dividing the whole area into two constituencies, each with rural and urban parts (*Foot* 1983, 458).

# Ethnic and Multicultural Communities (21st, 7.2 percent)

The boundaries of ethnic and multicultural communities and the locations of ethnic and multicultural concentrations were cited predominantly in metropolitan Toronto. The particular groups in question were the Italian, Portuguese and Jewish communities. The thrust of the representations was to avoid splitting Italian, Portuguese and Jewish concentrations among more districts than was necessary.

This factor is more important than it might appear from its frequency of citation. Where it applies, it is highly salient to those concerned. It is likely to become more important over time, as multicultural communities assert their full entitlement to democratic participation, and as group identity is more confidently asserted; however, there is great difference of opinion as to the degree to which these communities of interest can be respected in redistricting, and even as to whether they can be recognized at all. In redistricting, a multicultural community of interest is controversial in a way that, say, a community of interest created by a shared relation to the Highway 17 transportation corridor is not. Three approaches to the role of multicultural considerations in redistricting may be compared.

At one extreme is a "colour-blind" approach, which would require that ethnicity be ignored in redistricting. The arguments for this position were well summarized in Abigail Thernstrom's account of U.S. Senate testimony on revisions of the *Voting Rights Act:* "This is not India. There is no right to be represented on the basis of group membership (Henry Abraham) ... The Constitution speaks only of individuals ... Individuals choose by election other individuals to represent them from political subdivisions spread out over regions. There is no provision for group representation no matter how shamefully treated they were, nor how tragic their history (Barry Gross)" (see Thernstrom 1987, 132). Walter Berns (ibid., 132) warned that with a particular change to the Act, legislators would "represent not undifferentiated people, people defined only as individuals living in districts of approximately equal size, but defined as groups of people, defined by their race or language preference, and they can be said to represent them only if they are of that race or if they ... prefer that language." Thernstrom sums up the message of the testimony supporting this view as follows: "a society deeply divided by lines of race, ethnicity or religion must be organized as a federation of groups. Separate groups are the equivalent of separate nations. But a society in which the horizons of trust extend beyond the ethnic or racial group can become a community of citizens. And in a community of equal citizens individuals, not groups, are the unit of representation" (ibid.).

The opposite point of view is held by organized minority-rights groups and their advocates. It holds that race is always to be considered and that, at least under certain conditions (history and persistent pattern of discrimination, racial bloc voting, demonstrated lack of access to the political process), redistricting plans should be designed to allow Black voters to elect the maximum number of "candidates of their choice," with a 65 percent Black population majority considered

necessary to allow the expression of such choice (because of lower Black turnout and percentage of population over voting age) (Parker 1989). The competing arguments that minorities are often better off exercising significant influence in two or three districts than being concentrated in one are dismissed by a leading exponent of this view as "generally ... after-the-fact rationalizations for dilution of minority voting strength" (ibid., 107).

The middle view holds that racial, ethnic and multicultural communities are entitled to consideration on the same terms as other communities of interest – neither to be accorded automatic priority so that residents of the same ethnic background are arbitrarily herded together without regard to other districting principles, nor denied status as "communities" because their shared identity is racial or ethnic. A local community whose identity inheres in common Italian background should have its boundaries respected (if possible) just as communities united by other links; however, a district need not be artificially drawn to bring in a neighbourhood which happens to have the same ethnic demography, but which is a separate and unrelated neighbourhood whose natural orientation is elsewhere.

Bruce Cain (1984, 66), in discussing California redistricting techniques, distinguishes between "passive protection" of minorities that concentrates on prevention of the carving up of minority areas, corresponding to the middle-ground view, and "active protection," the affirmative gerrymander, requested (in America) by minority organizations.

The view generally taken in the Ontario redistributions under study and, it is submitted, the preferable view, is the middle-ground view. An interchange from the hearings is illustrative. It occurred in the Toronto public hearings during a representation by the Canadian Jewish Congress (Ontario Region) urging the avoidance of the use of Bathurst Street as a boundary, on the ground that it divides the local Jewish community:

THE CHAIRMAN: I must confess on philosophical grounds I seriously question whether – I hate the overused word "ethnic" – ethnic considerations are to be observed in a situation like this and I think there is some danger that they might be more divisive; that is, in political matters at least, the ethnic divisions should be said to be overcome, and it seems to me community of interest should be based on the neighbourhoods and things of that kind, industrial activity, rural activity and so forth rather than ethnic considerations. But that is a substantial point which we will have to take into account.

MR. SCHEININGER: Let me not overplay the ethnicity because we have difficulties, as you may appreciate, in defining what our community is because often we run into debates as to whether we are a religious community, whether we are an ethnic community, whether we are a community based upon common traditions and common heritage. Our concerns are not necessarily directed to our ethnicity, sir, but directed to the community of interest, and our interests involve our agencies and our institutions.

To give you such an example, I touch upon the Oakwood-Toronto-Eglinton [area]. For example, our community of interest would be for the production of educational services to our children. In that area, dealing with the two schools that exist now, we would want to make representation to government on the production of educational services to our children. That would involve representations from both east and west of Bathurst Street. We are dealing with agencies and institutions rather than ethnicity, if you would. Our agencies and institutions have the underlying philosophy of ethnicity and there is no doubt about that. But the reality is that the political process, as far as it involves the Jewish community, involves our agencies and involves our institutions.<sup>17</sup>

Any case for the American practice of "affirmative gerrymandering" in Canada faces two obstacles. The first is practical. Affirmative gerrymandering is only effective where a minority group is residentially concentrated in large enough numbers to elect the member it "prefers," should it act together. Many groups that might claim entitlement to the remedy – Native people and the Black community in Toronto, for example – are not concentrated in sufficient numbers to benefit from it. Moreover, in Toronto, for example, substantial Italian, Portuguese and Chinese communities are located in close proximity to one another, so that any deliberate attempt to draw boundaries to maximize the influence of one is likely to be at the expense of the natural community boundaries of another ethnic community.

The second obstacle to "affirmative gerrymandering" in Canada is that the conditions cited by its supporters as justifications for it do not demonstrably exist in Canada. The well-known standards for determining the discriminatory nature of an electoral system, for which affirmative gerrymandering is the remedy, include racial bloc voting, a lack of minority access to the process of choosing candidates, a demonstrated unresponsiveness of legislators to minority interests, and a history of past discrimination sufficient to preclude effective political participation (*White* 1973; *Rogers* 1982). Advocates of affirmative

gerrymandering who criticize the strictness of the standard concede that affirmative action is only appropriate where it can be shown that an antiminority bloc voting majority, over a substantial period of time, acts consistently to defeat candidates publicly identified with the interests of, and supported by, a politically cohesive, geographically insular, racial or ethnic minority group. An examination of recent elections, at least in the jurisdiction here under study, does not demonstrate any such pattern of sustained bloc voting against minority candidates such as is alleged in many American jurisdictions.

#### Similar-Size Communities (25th, 3.8 percent)

Under this category were coded references to municipalities said to belong with other areas made up of municipalities of about the same size, as opposed to being placed in a district "dominated" by a larger city in which their influence would be lessened.

#### Age of Communities (26th, 3.4 percent)

This category included references to communities said to belong with another area because they were both "long settled" or "new." In urban sociology, this factor is considered an indicator of community, particularly in suburban areas.

#### Type of Housing (27th, 3.4 percent)

In urban studies literature, similarity of housing type is commonly considered to be an indicator of natural links between neighbourhoods.

# Language (28th, 3.4 percent)

Under this category were coded references to the advisability of uniting areas with similar linguistic patterns. The references were typically in eastern Ontario. At the provincial level, the issue was the maintenance of Ottawa East as the only Ontario urban district with a francophone majority. The francophone majority status had been previously threatened in the 1974 redistribution. At the federal level, the major concern was avoiding unnecessary combination of heavily anglophone rural areas with strongly francophone Ottawa suburbs.

# Social Class/Socio-economic Status (29th, 2.6 percent)

Representations were coded under this category when they urged that areas of similar social class or socio-economic characteristics be united, or that a certain area not be added as a small adjunct to a district dominated by citizens of a different class composition. Judged by its frequency of mention, this factor might be considered unimportant.

#### COMMUNITY OF INTEREST IN REDISTRICTING

However, it may be that many representatives at hearings are reluctant to make openly class-oriented arguments, because of the delicacy of treatment that they require and their seeming inappropriateness in a system based on formal political equality regardless of income level. However, many arguments based on unspecific notions of community of interest in urban redistricting, such as general "affinity" and "similarity" of one area with another, have a clear relation to class or socioeconomic characteristics; and many specific indicia cited – local neighbourhoods, historical links – in some cases are proxies for the factor of socio-economic characteristics.

This general reluctance to deal with class, as well as the argument for considering it a vital component of community of interest, is eloquently captured in an exchange at the Toronto public hearings between the chairman, Justice Samuel Hughes, and MPP Ross McClellan:

MR. McClellan: The principle of the last municipal redistribution was to eliminate the so-called strip wards and move to a system of block wards, so that the municipal electoral districts would be as homogeneous as possible. This has worked in most of the city. I must say it has not worked in my area —

THE CHAIRMAN: No.

MR. McCLELLAN: - because Ward 5 extends in its northwest corner into the west end of the City of Toronto, so that you have a bluecollar neighbourhood as an appendage to a relatively affluent centre city ward, and I have to tell you quite frankly that the constituents in the blue-collar parts of Ward 5 get substantially inferior service than the people who live in the centre city. I think this is simply one of the political realities that we have to accept. Our parks are poorly maintained and our commercial districts are languishing. Our concern, quite frankly, is that if you replicate this situation with respect to the provincial electoral districts, you are in effect taking a measure of political clout away from blue-collar neighbourhoods which, up to this point, have been part of relatively homogeneous blue-collar constituencies, and their political voice will be muted if they are put into a constituency which, as I say, extends all the way over to Jarvis Street and it contains a majority of people whose family income is approximately double.

THE CHAIRMAN: You are talking about the proposed St. Andrew?

MR. McCLELLAN: As it extends over to Christie, yes. My concern is with the portion of St. Andrew that extends over to Christie Street.

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I don't think it is fair to the people who live in those neighbourhoods that they be part of, quite frankly, an upper middle class constituency that extends over to Jarvis Street and includes the centre city downtown core.

THE CHAIRMAN: Probably that is not, with great respect, a very democratic observation.

MR. McCLELLAN: I think it is. I think it is not a very democratic proposition to in effect counterbalance the political voice of low income constituents by making them a small minority within a middle class constituency. That was the principle that was adopted for the last municipal electoral redistribution. I believe that a deputation from the St. Andrew–St. Patrick New Democratic Party will be presenting a submission which includes a statement from Mr. Kennedy dealing with precisely this question, whether electoral districts should have a diversity of interests within them or whether they should have a community of interests and he came down on the side of community of interests so that minorities would not be disenfranchised.

THE CHAIRMAN: But surely not on the basis of wealth or opportunity. That is a novel proposition to me as far as electoral boundaries are concerned ... One man, one vote, whether he goes to the polls in a Rolls Royce or whether he goes on a bicycle.

MR. McClellan: Well, I think we may have a different understanding of what community of interest means. It seems to me that when you have an opportunity to draw electoral boundaries so that the common community of interest of a set of neighbourhoods can be grouped together so that their representative can represent those common interests with one loud and clear voice, that is quite frankly superior and preferable to having the representative trying to balance what are often conflicting views.<sup>18</sup>

Religion (31st, 1.7 percent)

A few references to religious affinity were coded. Typically, the representations did not argue for any attempt at separation of citizens of different religious belief, but merely affirmed the suitability of combining areas sharing similar religious demographics.

#### **ABBREVIATIONS**

All E.R. All England Reports

am. amendedc. chapter

#### COMMUNITY OF INTEREST IN REDISTRICTING

C.A. Court of Appeal
F.Supp. Federal Supplement
Q.B. Queen's Bench Reports
R.S.A. Revised Statutes of Alberta
R.S.C. Revised Statutes of Canada

R.S.N. Revised Statutes of Newfoundland

S.A. Statutes of Alberta

Sched. Schedule

S.Q. Statutes of Quebec

s(s). section(s)

S.S. Statutes of Saskatchewan

Supp. Supplement

U.S. United States Supreme Court Reports

W.L.R. Weekly Law Reports

#### NOTES

This study was completed in May 1991.

- 1. *Karcher v. Daggett* (1983) [congressional districting]; *Mahan v. Howell* (1973) and *Brown v. Thompson* (1983) [state legislative districting].
- 2. Ontario, Ontario Electoral Boundaries Commission (1984b, 1239); representation of J.A. Moore, Deputy Reeve of Township of Asphodel, at Peterborough sitting, 3 May.
- 3. Canada, Federal Electoral Boundaries Commission for the Province of Ontario (1986b, 79); representation of Albin Rogala at Hamilton sitting, 26 November.
- 4. This translation of De Republica 1.25 from Friedrich (1959, 6).
- 5. See Lowenstein and Steinberg (1986, 14 n.), and cf. Skinner (1948, 265) and Rae (1971, 94; probability of affecting election outcome "above the probability for a direct cranial hit by a meteorite, but nothing like a good bet").
- 6. The author is grateful to Professor Daniel Soberman (Faculty of Law, Queen's University) for pointing out the need to distinguish between "equality-based" and "democracy-based" arguments for population equality.
- 7. The author gratefully acknowledges the assistance of D. Keith Heintzman of the Commission's research staff in reviewing the data and performing the tests of significance.
- 8. Ontario, Ontario Electoral Boundaries Commission (1984b, 2028–64); Toronto sitting, 15 May.
- 9. Canada, Federal Electoral Boundaries Commission for the Province of Ontario (1986b, 132–50); Toronto sitting, 18 December.
- 10. Ibid. (103); Nepean sitting, 12 November.

- 11. Ibid. (53); representation of Len Hopkins MP, Sudbury sitting, 6 November.
- 12. Ibid. (84, 105).
- 13. Ontario, Ontario Electoral Boundaries Commission (1984b, 182–87); representation of Mayor Thomas Wolder at London sitting, 12 April.
- 14. Ibid. (952); representation of Ken Hunter, Reeve of Township of Foley, at Barrie sitting, 1 May.
- 15. Ibid. (1412); Ottawa sitting, 9 May.
- 16. Ibid. (34); Windsor sitting, 9 May.
- 17. Ibid. (2118-19); Toronto sitting, 15 May.
- 18. Ibid. (2206-209); Toronto sitting, 16 May.

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# ENHANCING RELATIVE VOTE EQUALITY IN CANADA The Role of Electors in Boundary Adjustment



**Munroe Eagles** 

#### DISTRICTING AND POLITICAL EQUALITY

Democracy involves some measure of citizen participation in, and control over, the exercise of political authority. While the nature and extent of this control are open to debate, most would consider that popular choice of representatives through competitive elections constitutes a minimal condition of the existence of democracy (some would also consider it a sufficient condition; see Schumpeter 1962, 269). Naturally, reforms aimed at legitimating governance and strengthening the responsiveness of political authority tend to focus on the electoral process. Indeed, one of the constitutive nation-building experiences for many political systems has involved the extension of the rights and obligations of civic life to members of the "lower classes" (see Bendix 1964; Freeman and Snidal 1982; Rokkan 1970).

In Canada, as in most countries, the adoption of more inclusive definitions of citizenship has proceeded haltingly and has culminated only in this century with the institution of manhood suffrage and (subsequently) universal suffrage (see Qualter 1970, 1–44; Ward 1964, 211–39). At present, the right to participate in the federal electoral process is granted to all individuals 18 years of age and older who meet minimal residency requirements. Only noncitizens and those incarcerated at the time of an election are ineligible to vote. As such, the proportion of the total population of Canada that is entitled to vote in federal elections has increased

from approximately 13 to 30 percent (depending on the province) in 1885 (Ward 1964, 221) to almost 70 percent nationwide in 1988.

While universal suffrage has become the hallmark of modern representative democracy, so too has a commitment to political equality emerged as a deeply held tenet among democrats. Reflecting the centrality of elections to the democratic process, the egalitarian impulse of democracy includes a strong conviction regarding the equality of voting power. David Elkins recently articulated this in a Canadian context. "Because we believe in equality," he wrote, "we expect each of us to count as one and the majority rules" (Elkins 1989, 715). However, the right to vote can be seriously diluted if all votes are not accorded equal weight by the electoral process (Schindeler 1968, 18). For example, a voter casting a ballot in a riding comprising 100 other voters would have 10 times the influence on electoral outcomes of a voter living in a riding of 1 000 electors. In Canada (and in other systems employing district representation), equality of the vote necessarily involves creating constituencies that are as equal as possible in terms of numbers of voters. The political equality of electors in Canada, therefore, is in large measure contingent upon the equality of riding electorates. Political scientists conventionally refer to deviations from vote equality as "malapportionment" (Morrill 1981, 2).1

While malapportionment is frequently associated with the partisan manipulation of electoral boundaries (as a form of gerrymandering), there are several other factors that may compromise or erode the relative equality of constituency electorates. One of these arises from the current practice of using total population figures, as opposed to the eligible electorate or actual voters, for the population base in the federal boundary adjustment process. So long as the ratio of eligible or actual voters to total population is spatially invariant, no dilution of vote equality will result from the conventional practice. However, when noncitizens (i.e., those not entitled to vote) or non-voters are systematically concentrated in particular constituencies or types of constituencies, the votes of citizens in these ridings assume proportionately greater value. In fact, whenever the population base used in boundary adjustment is broader (i.e., more inclusive) than the number actually casting ballots, the result is a magnification of the voting power of those residing in districts with high numbers of non-voters (Silva 1968, 56).

A second source of malapportionment is developmental, in that it arises out of the gradual erosion of equality resulting from population shifts over time. Like most developed societies, Canada's population exhibits a high level of residential mobility. According to the 1986 census, 40.5 percent of non-institutionalized Canadians had moved in the

previous five years. While there is no way of knowing what fraction of this overall figure is made up of local migrants who remain in the same federal constituency, it is clear that the migration of Canadians will affect whatever level of relative vote equality is achieved at the inauguration of a set of electoral boundaries. At present, the Canadian Constitution provides for decennial revisions to the electoral map (to be made after the census counts are available). However, this provision was motivated primarily by the need to redistribute seats among provinces in order to preserve the interprovincial relationships characteristic of the federal bargain, as opposed to the need to maintain relative vote equality (Carty 1985, 274).

The maintenance of relative vote equality under conditions of rapid demographic change is necessarily a dynamic enterprise. While it is obvious that the adjustment of boundaries to reflect population shifts cannot occur instantly without impugning the orderly operation of governance, some reasonable effort must be made to maintain the freshness of boundaries if the relative equality of voters is to remain within tolerable limits. Though written over two decades ago, Terence Qualter's commentary on the need to respond to these changes on an ongoing basis remains valid and is worth quoting at length:

Within a democracy a great deal depends on the establishment of an equitable basis for representation, and a machinery for regularly adjusting it to this changing environment. Representative government implies, as a necessary condition for its continued existence, that there shall be some rational relationship between the represented and the representatives; rational, not only in a strictly logical sense, but also in terms of democratic values. While the question is not a new one, it has today acquired a greater relative significance and urgency. Because the environment is changing more rapidly than ever before, the review machinery needs to be more elaborate, operating regularly, or automatically, and not only when mounting external pressure finally forces drastic and convulsive change. In a healthy democracy change is accomplished when necessary with minimal disruption, which would seem to mean that so long as the environment continues to change through population movements, varying social structures and major economic shifts, the parallel changes in the political structure must proceed as frequent small adjustments rather than as infrequent upheavals. (Qualter 1970, 82)

In this context, elector-based districting offers a number of advantages over the current (population-based) practices (Grondin 1990, 10).

It provides a superior measure of equality of electors or citizens. Since not all residents of a constituency are entitled to vote, a districting scheme based on residents will not necessarily generate equal electorates. If the concern is to provide a foundation in democratic and constitutional theory for redistricting, adopting electors as the basis for districting decisions appears to be a logical move. It does not suggest that noncitizens would not have their interests attended to by elected members. Currently, representatives are expected to look after the interests of those under the age of 18, those with a mental health disability, or those otherwise disenfranchised, even though these groups do not cast a ballot (Silva 1968, 66). A reasonable suggestion might be to provide supplementary resources to those members representing constituencies with large concentrations of noncitizens (in the same manner as the representatives whose special servicing challenge arises from geography or topography).

Regarding the increased need to make boundary adjustments under conditions of high residential mobility, since elections are held more frequently than are censuses, a shift to elector-based districting also opens the possibility for the adoption of a flexible, ongoing and minimally disruptive process of boundary revision to maintain acceptable

standards of vote equality.

What follows in this study is an evaluation of the appropriateness of a move to elector-based redistricting in the Canadian context as a means of enhancing and maintaining relative vote equality. The assessment proceeds through six sections. The next (second) section reviews the evolving theory and practice of districting in several Anglo-American countries, revealing that political systems achieve an accommodation between these principles in very different ways. These introductory discussions establish general challenges facing those who wish to design electoral districts that genuinely serve the values of democracy. They also identify a distinctively Canadian tradition of political districting with which any reform proposal must be broadly consistent if it is to be successful.

Attention turns in the third section to the question of the extent to which the current system of districting in Canada pursues and preserves a relative equality of voting power. Of particular concern is the issue of the temporal decay of vote equality within the life-cycle of a set of boundaries. The analysis of the decay over the life-cycle of the last three electoral maps clearly establishes the desirability for a more fluid process of boundary revision. The adoption of an elector-based approach to boundary determination has been suggested as a means of addressing this and other shortcomings of the current districting system (see

Cameron and Norcliff 1985, 33; Grondin 1990, 10). To various degrees, depending on how and when the electoral list is compiled and revised, elector-based districting provides a more continuous measure of constituency size than the decennial census. A move to this kind of system, therefore, opens the prospect of more frequent and less radical boundary reviews.

The transition to any new system of districting would be easiest if its application could be shown to be broadly consistent with established practices and if the electoral map resulting from its application did not differ radically from those produced by the current system. To determine the probable magnitude of differences between population- and elector-based districting schemes, the fourth section explores the empirical relationship between the ratio of electors to total population across Canadian constituencies. In general, while the two population bases are strongly correlated, there are some systematic discrepancies. Therefore it is important to explore as far as possible the probable impact of a shift to elector-based districting on the representation of particular social and territorially defined groups, as included in the fifth section. This portion of the study also presents the results of a simulation showing the potential for disruptiveness that might accompany a move to a more continuous, perhaps automatically triggered process of redistricting.

In the final section, a brief overview of the performance of more fluid redistricting systems in other jurisdictions (Australia and Quebec) provides an opportunity to address the issue of disruptiveness in realworld settings of democratic representation.

A final caveat about what is not covered in the study is in order. It is important to distinguish those aspects of malapportionment that arise in the apportionment (i.e., decisions regarding the distribution of a particular number of seats to the various provinces) and the districting process (the determination of constituency boundaries within a province). Distribution and districting are related but distinct aspects of the electoral process and are governed by different regulatory frameworks. The apportionment process is described in section 51 and 51A of the Constitution Act, 1867. The inequalities resulting from these constitutional provisions have been historically accepted as necessary to protect the interests of particular geographic areas, such as the northern territories, or certain provinces. Arguably, the provisions reflect important aspects of the political bargain that constitutes Canadian federalism and hence would be difficult to change except as part of a much larger constitutional reform package. As such, significant as these provisions are for a consideration of the relative equality of the vote for Canadian politics, they fall beyond the scope of this study.

Once a particular number of seats has been allocated to each province, however, the task of determining where the precise boundaries will be drawn remains. Since 1966, these districting decisions have been made by independent (nonpartisan) provincial boundary commissions, following guidelines set down by federal statute (discussed in more detail in the next section). Adjustments to the statute governing the work of these commissions could be made more easily, since they need not become embroiled in larger and thornier issues of intergovernmental relations. Accordingly, this study explores the notion of redistricting using electors while assuming that the redistribution or reapportionment system will continue to rely on total population (this is similar to the Australian system; see Horn 1990, 2).

# CANADIAN DISTRICTING PRACTICE IN ANGLO-AMERICAN CONTEXT

Dividing electors into districts is a complex process, requiring the balancing of a large number of factors of which electoral equality is only one. Frequently cited as an important consideration for redistricting is the relative difficulty of representing different kinds of districts. Elected representatives in geographically large and sparsely populated constituencies are thought to face more serious difficulties in servicing the needs of their constituents than do their urban counterparts. Such ridings, therefore, ought to be smaller in terms of the number of electors in order that this imbalance in delivering the same levels of service can be redressed.

Whatever special servicing difficulties may be encountered by representatives as a result of the constituency's geography or demography, the argument that compensation for such challenges should be sought through the boundary determination process risks contaminating what ought to be a principled process with considerations of expedience. Moreover, the boundary determination process itself is a blunt and unimaginative instrument for addressing servicing concerns. A more direct means of redressing the issue would be to provide members from remote or sparsely populated regions with greater allowances for additional staff, and telecommunication facilities to deliver satisfactory levels of representation and service. Remoteness and geographic size constitute important aspects of the challenge of representation, but they ought not to be elevated to the status of redistricting principles.

There are essentially two more worthy redistricting principles: viz., community of interest and voter equality.<sup>2</sup> Proponents of the former argue that effective representation requires recognizing and incorporating significant territorially organized groups in society in the process

#### ENHANCING RELATIVE VOTE EQUALITY

of constituting electoral districts. Indeed, the tradition of representing "places" rather than "voters" occupies a prominent place in Anglo-American political development. Advocates of this principle of districting today emphasize the importance of granting representation to the sociologically meaningful communities likely to generate similar political outlooks from residents. From this perspective, the internal homogeneity of electoral units is accorded priority in redistricting.

While many factors might contribute to the emergence of a community of interest, proponents of this principle advocate taking into account historical, ethnic and linguistic factors, the nature of settlement patterns, relative rates of growth, community sentiment, and a host of other matters when drawing constituency boundaries. In addition, the principle of community of interest is often invoked in another sense to justify "weighted voting" schemes. For example, some argue that the importance of rural areas for the health and vitality of a country is such that any underpopulation of these areas ought to be compensated for by weighting the votes of residents more heavily than those of urban voters (e.g., see Long 1969; May 1975).

The main alternative to community of interest in districting emphasizes the need to approximate "one person, one vote, one value" in the electoral process by creating districts with roughly equal numbers of voters. Proponents of this position stress the continuity of this principle with the general development of political equality characteristic of representative democracies over the past several centuries (Qualter 1970, 85; Steed 1985, 269). Yet absolute equality in districting is certainly impractical and may perhaps be undesirable. The inaccuracy of any accounting regime, coupled with the continuous mobility of population in advanced societies, means that some residuum of voter inequality will remain regardless of how committed electoral cartographers may be to the ideal of population equality. Furthermore, the application of too stringent a standard of population equality may have deleterious effects on the quality of political representation by (among other things) requiring more frequent and extensive redistricting exercises.

Electoral maps vary – from country to country and over time in the same system – in the balances or compromises they embody among these different and antagonistic districting desiderata. While American districting experience since the early 1960s has been focused on the pursuit of a stringent standard of vote equality, the British practices have enshrined community of interest considerations more whole-heartedly. As in many other things, Australian and Canadian practices may be seen, albeit in different ways, as hybrids of these two traditions. A brief survey of the various practices will help identify Canada's

distinctive tradition with respect to these principles and suggest something of the contemporary forces for change in electoral cartography

in this country.

The British tradition of boundary determination emphasizes community-of-interest considerations. The *House of Commons* (*Redistribution of Seats*) *Act*, 1949, provides that constituency boundaries ought to respect the administrative boundaries of other levels of government (rule 4) and that "the electorate of any constituency shall be as near the electoral quota as is practicable" (rule 5). However, the members of a boundary commission may "depart from the strict application of [the quota] ... if special geographical considerations, including in particular the size, shape and accessibility of a constituency appear to them to render a departure desirable" (rule 6, quoted in Johnston 1986, 279–80).

Analyses of the experience of Britain with recent redistributions suggest that commissioners are reluctant to adhere to narrowly defined standards of electoral equality. In fact, in their 1969 report, the Boundary Commissioners for England explicitly stated that they understood that "local ties were of greater importance than strict mathematical equality" and that they "began the review with the intention of avoiding, where possible, proposals that would change constituency boundaries for the sake of adjustments in the size of the electorates" (quoted in McKay and Patterson 1971, 62). Not surprisingly, the constituencies they produced varied greatly in terms of population. The map drawn by this Commission was first used in the election of February 1974, at which time the smallest constituency held 25 023 voters and the largest was home to 96 380 electors (see Birch 1980, 71).

At the other extreme in terms of the balance between community of interest and voter equality is the American experience with redistribution and districting. The "reapportionment revolution" that swept the United States in the 1960s saw the Supreme Court establish an extremely stringent standard of population equality across electoral districts.3 The radical commitment to vote equality is generally thought to be an expression of America's liberal political culture, with its emphasis on individual rights and equality. Although there is clearly an element of plausibility to this view, the term "culture" refers to long-standing and enduring patterns of understanding and interaction. If America's political culture is responsible for that country's electoral egalitarianism, one would expect the principle to be pursued consistently by Americans over an extended period of time. This has generally not been the case, however. While the Constitution provides for districting on the basis of population equality, by the late 19th century some sizable disparities in the population-based size of

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Congressional districts had emerged, especially in the size of state legislative districts. For example, in one of the early malapportionment cases, *Wesberry v. Saunders* (1964), Georgia's congressional districts, ranging in population from 272 000 to 824 000, were found to violate constitutional guarantees of equality.

If political culture alone cannot account for the extreme egalitarian character of American redistricting, neither is a more legalistic account that focuses on the pivotal role of the Bill of Rights and the Supreme Court by itself intellectually satisfying. Americans have been constitutionally guaranteed political equality for centuries, and yet this alone has been inadequate to ensure electoral districts be drawn to minimize population disparity. In fact, prior to the 1960s the courts had resisted the temptation to become embroiled in districting disputes: for example, Justice Felix Frankfurter expressed the majority opinion in *Colegrove v. Green* (1946) that "... courts ought not to enter this political thicket." However, the Supreme Court changed its orientation in the historic case of *Baker v. Carr* (1962), intervening on the basis of 14th Amendment protection of "equal representation" to require a reduction in population disparities in Tennessee's legislative districts.

As a consequence of this landmark decision, a series of cases over the next five years drastically reduced malapportionment at federal and state levels. Today, most districts at all levels in the American political system typically deviate less than 10 percent from their relevant electoral quotients (and Congressional districts are drawn to a 1–4 percent tolerance; Morrill 1981, 19). Reflecting on his experiences over this critical period in American history, Earl Warren stated that "the most important Supreme Court rulings of [his] sixteen years as Chief Justice of the United States were those declaring that one man's vote should mean as much as any other man's" (quoted in Grofman et al. 1982, xiii).<sup>4</sup>

A more plausible interpretation of the adoption of strict equality standards in the American context might stress the attractiveness of a convenient and rigorous mathematical standard to a Court that had, until the 1960s, been reluctant to enter the "political thicket" of boundary determination. In this respect, it seems that judicial activism in a period of social transformation, together with a constitutional framework conducive to the pursuit of individual rights, better explains this change in American districting than any deep-seated cultural or legal commitment to political equality.<sup>5</sup>

These preliminary considerations suggest that two frequently made extrapolations from the American experience to Canada ought to be discounted. The argument that a "reapportionment revolution" could not happen in Canada because of the absence of cultural supports for

egalitarianism seems suspect. By the same token, the argument that the recent adoption of constitutionally entrenched equality guarantees in the *Canadian Charter of Rights and Freedoms* makes a similar judicial revolution inevitable is also doubtful. The American experience is less straightforward than such exuberant comparisons suggest, and such lessons for Canada as can be extrapolated from the American districting experience are more subtle and complex.

While British and American influences are customarily seen as the most important for a range of Canadian orientations and practices, for a variety of reasons the Australian model of redistribution and redistricting is of particular relevance. Australia shares with Canada the British parliamentary heritage, along with its emphasis on the representation of communities rather than voters (Rydon 1968, 133). It also shares a similar political geography in that population tends to be concentrated in relatively small areas, leaving large tracts of land sparsely inhabited. Moreover, the Australian model of districting by independent boundary commissions at the state and province level was explicitly emulated in the reforms adopted by Canada in 1964 (Courtney 1985; Qualter 1970, 103).

The principle of "one vote, one value" has long been a part of the rhetoric of Australian democracy (Wright and Haber 1978, 94). In practice, however, districting decisions for the past century have favoured rural over urban constituencies, resulting in overrepresentation of rural areas (May 1975). Until 1974, the Electoral Law allowed deviations of up to 20 percent above or below a state's electoral quotient in order to "heed disabilities arising out of remoteness or distance, the density or sparsity of population in the division, and the area of the division" (quoted in May 1975, 132). Since the passage of the Labor government's reform package in 1974, however, the tolerance of deviations for the districts of the House of Representatives has been reduced to plus or minus 10 percent (Hughes 1979, 307). Furthermore, the reforms automatically triggered the redistricting process by providing that boundaries in a state be revised whenever one-quarter of that state's electorates exceed the 10 percent tolerance (May 1975, 132). Reforms introduced in 1983 guarantee a redistribution every seven years (Courtney 1988a, 15) and instruct commissioners to draw boundaries to take account of population trends. Therefore, although the machinery of redistricting in Canada and Australia remains quite similar, in operation the Australian system has gone considerably further in the pursuit of "one vote, one value."

Historically, a number of factors have attenuated the pursuit of "one person, one vote" in the Canadian context. The difficulties in representing remote, sparsely populated northern ridings ("servicing con-

siderations"), the need to build safeguards for regional representation into the composition of the House of Commons, and a tradition of representing interests and communities rather than individuals are among the chief considerations that have traditionally served to legitimate population inequalities among constituencies. Pragmatism tempered by considerations of partisan advantage, not high principle, has been the dominant orientation brought by Canadians to the configuration of an electoral map. As John Courtney has argued, "Representational questions have never loomed large on the Canadian political landscape ... Although 'rep. by pop.' was the sine qua non of the Confederation bargain for many Upper Canadians, neither it nor its more recent first cousin, 'one person-one vote,' has ever matched the appeal generated by the constitution, federal-provincial relations and other matters now so much a part of the Canadian political fabric" (Courtney 1988b, 675). Likewise, Kenneth Carty has contrasted the absence of any concerted attack on malapportionment in Canada with the American experience (1985, 282-83).

Prior to 1964, electoral boundaries were established by Parliament, which meant that the party in power was primarily in charge of drawing new electoral maps. No explicit rules governed this process, and "... any rational boundary drawing was likely to be the result of coincidence or accident" (Ward 1967, 107). The transfer of this responsibility to independent provincial boundary commissions in 1964 was accompanied by a set of instructions that included an explicit ordering of the conflicting principles of equality of population and community of interest (see Lyons 1969, 1970). The *Electoral Boundaries Readjustment Act* informs commissioners that:

- 15.(1) (a) the division of the province into electoral districts and the description of the boundaries thereof shall proceed on the basis that the population of each electoral district in the province as a result thereof shall, as close as reasonably possible, correspond to the electoral quota for the province, that is to say, the quotient obtained by dividing the population of the province as ascertained by the census by the number of members of the House of Commons to be assigned to the province ...; and
  - (b) the commission shall consider the following in determining reasonable electoral district boundaries:
    - (i) the community of interest or community of identity in or the historical pattern of an electoral district in the province, and

(ii) a manageable geographic size for districts in sparsely populated, rural or northern regions of the province.

The Act proceeds to clarify the equality standard further. Commissioners are instructed to draw boundaries in such a way that "... except in circumstances viewed by the commission as being extraordinary, the population of each electoral district in the province remains within twenty-five percent more or twenty-five percent less of the electoral quota for the province" (section 15(2)(b)). In comparative perspective, of the systems discussed above this is a rather generous range of allowable deviations; only the British draw constituencies to a more relaxed standard of population equality. Boundary commissioners in that country had been advised to apply a similar tolerance in their cartographic exercise in 1946, but they requested to be exempted from this provision on the grounds that its achievement was impossible (Johnston 1986, 278). More recent attempts to use the British court system to establish a fixed standard of tolerable deviations for boundary commissions have not met with success (ibid., 281–83).

In the area of districting, as in many other aspects of public life, the Canadian experience appears to be a pragmatic blend of American and British practices. McKay and Patterson's comparative analysis of redistricting in the three countries in the late 1960s revealed that "the criterion of equal population for legislative districts is quite strictly enforced in the United States, less so in Canada, and least in the United Kingdom" (1971, 75). Drawing a clear contrast between districting practices on either side of the Atlantic, McKay and Patterson attributed the distinctiveness of Britain's practice to the higher priority attached to party discipline in that country and to the higher priority given to the representation of individuals in North America. Whatever the merits of their explanation as applied to the Canadian case, the designers of Canada's electoral maps have deviated frequently - and sometimes greatly - from their quotients, particularly by overrepresenting rural and remote northern areas ill served by communications and travel facilities (Ward 1967, 107).

Three sets of boundaries have been produced and implemented by Canada's system of provincial commissions. These provide a rich body of data with which to identify the priorities of commissioners and uncover any change in the representational priorities they have applied in their cartographic task. Broad patterns in this regard have been described by John Courtney, who argued that there has been a growing commitment to "intraprovincial egalitarianism" in the work of these commissions (even while parliamentary decisions regarding the dis-

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tribution of seats to provinces embody increasing "interprovincial inegalitarianism") (Courtney 1986, 19; 1988b, 689). In other words, "one person, one vote" seems to be increasingly accepted as a standard for federal districting decisions, though not for questions of redistribution.<sup>7</sup>

There are reasons to expect that this trend will continue, and perhaps even be accelerated in the near future. Many academics and commentators have long argued that the adoption of the Canadian Charter of Rights and Freedoms, with its guarantees of political equality, will potentially necessitate a higher standard of equality in the districting process (e.g., see Cameron and Norcliff 1985; Carty 1985, 286; Courtney 1988b, 684-85; Hyson 1990; Morton and Knopff 1990; Pasis 1987). While at the time of writing no Charter challenge of existing districting practices has been heard before the Supreme Court of Canada, a series of recent decisions at the provincial level seem to lend credence to this view. For example, in her decision on Dixon v. British Columbia Attorney General (then Chief Justice) Beverley McLachlin of the British Columbia Supreme Court relied heavily on the doctrine of population equality (see Izard 1989–90; Roach 1990). Specifically, McLachlin argued that: "the concept of representation by population is one of the most fundamental democratic guarantees. And the notion of equality of voting power is fundamental to representation by population ... equality of voting power is the single most important factor to be considered in determining electoral boundaries" (Dixon 1989, 259, 266; see also Roach 1990, 91). Importantly, however, her decision acknowledged that equality of voting power was not an absolute right. Instead, geographic and regional concerns could and should justify deviations from strict equality in the interests of good government.

A recent decision of the Appeals Division of the Supreme Court of Saskatchewan reinforced McLachlin's reasoning in several ways. By overturning that province's practice of establishing a fixed number of urban and rural constituencies and by declaring the permissible deviation of plus or minus 25 percent unconstitutional, the Saskatchewan decision underscored the inclination of the courts to regard egalitarian considerations as "... the controlling and dominant consideration in drawing electoral constituency boundaries ..." (Reference re Provincial Electoral Boundaries, 23). Like McLachlin, however, the Supreme Court of Saskatchewan rejected equality as an absolute right. Instead, the judgement upheld the province's practice of maintaining two geographically extensive but sparsely populated northern constituencies. The justices declined to offer a fixed range of permissible deviations from absolute vote equality. Interestingly, however, the decision made

explicit reference to the necessity of apportioning the Legislative Assembly using the criterion of "substantially equal voter population." "This is so," the Justices reasoned, "because most citizens can participate only as qualified voters through the election of legislators to represent them" (ibid.).

The Supreme Court of Canada has yet to rule on districting matters, and therefore it is difficult to anticipate how this body will respond to the appeal of the Saskatchewan Court's decision that is currently being planned. It is interesting to note, however, that Justice McLachlin was elevated to the Canadian Supreme Court following her landmark decision in the British Columbia case. In any event, forecasting the outcome and impact of future judicial decisions in this area is a difficult exercise best left to legal experts.

What is considerably less difficult to predict, however, is the probable proliferation of such Charter-based challenges in other jurisdictions within Canada in the near future. All that is required to initiate the process is an individual or group claiming to be disadvantaged or discriminated against by the operation of the districting process. The likelihood of such challenges at the federal level will therefore hinge in part on the extensiveness of the problem of malapportionment.

# MEASURING MALAPPORTIONMENT IN RECENT CANADIAN ELECTORAL MAPS

Regardless of the relative merits of districting according to population equality and community of interest, an empirical assessment of the role of these factors in recent Canadian experience can be easily obtained. How thoroughly have federal boundary commissions for each province pursued the objective of population equality in their districting decisions? Has there been any marked change in this over the three electoral maps produced under these regulations? How satisfactorily have boundaries determined on the basis of total population figures from the decennial census achieved equality of the vote in constituencies? How significantly does the equality standard met at the introduction of a set of electoral boundaries decay over time? These and other questions are addressed in this section using constituency-level population figures from the 1961, 1971 and 1981 censuses, along with numbers of electors from enumerations of eligible voters for the 1972, 1974, 1979, 1984 and 1988 elections (Elections Canada).8

A lively debate has emerged concerning the most appropriate measure of malapportionment (see Alker and Russett 1964; Dixon 1968b, esp. 185–89; Schubert and Press 1964). Although several measures, each with its particular strengths and weaknesses, have been pro-

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posed, present purposes are reasonably well served by two simple and intuitively appealing measures of the extent to which population equality has been achieved in recent districting decisions. The first is a simple frequency count of constituencies deviating from their provincial electoral quotients. In addition, as a summary measure of the performance of boundaries in terms of vote equality, the minimum proportion of population necessary to elect a majority government (i.e., one obtaining 50 percent of the available seats, plus one) is also reported. This has variously been referred to as the "index of representation" (Rydon 1968), the "minimal majority" measure (Alker and Russett 1964, 211-12) or the Dauer-Kelsay Index (Schubert and Press 1964, 305). Alker and Russett's comparison of the performance of various measures of inequality reveals that this measure correlates highly with others frequently used in the study of malapportionment (e.g., Gini coefficients; the ICV, or inverse coefficient of variation). They conclude that for their data (on the apportionment of 27 American state senates), it appears to offer "a reasonably adequate measure of the whole distribution" (Alker and Russett 1964, 217; see also Qualter 1970, 89–93).9

A basic issue for empirical investigation concerns the extent to which the boundary commission process has produced constituencies that are "as close as reasonably possible" to their respective provincial quotients. Table 4.1 presents data pertaining to two aspects of the achievement of this objective. It presents the deviations from provincial population quotients used by the last three boundary commissions, as well as the deviations around provincial electors quotients for the first elections held on each set of boundaries. Minimal majority or Dauer-Kelsay Index scores for each measure are also presented as summary indicators of the achievement of vote equality. <sup>10</sup>

The importance boundary commissioners have assigned to equality considerations when districting is indicated by the population quotients taken from decennial censuses, since this is the information on which they base their districting decisions. A comparison of the distribution of deviations around provincial population quotients over the three sets of boundaries suggests that intraprovincial egalitarianism in the boundary determination process is increasing over time (compare the left columns for each set of boundaries). In terms of achieving relative equality of the population across constituencies, the most recent redistribution is clearly the most successful.

Particularly striking is the fact that over a third of the seats in the 1987 distribution fell within 5 percent of their respective provincial quotients, almost doubling the comparable proportion for the 1976

Table 4.1
Distribution of deviations from provincial quotients at time of districting and first election, 1961–88
(percentage of all constituencies<sup>a</sup>)

	196 bound		1976 boundaries		1987 boundaries	
	1961 population	1966 electors	1971 population	1979 electors	1981 population	1988 electors
> ± 25%	0	29.0	0	14.7	1.7	12.3
± 20-25%	10.7	14.9	9.0	11.1	6.1	10.3
± 15-20%	17.2	11.8	24.3	15.8	10.2	13.0
± 10-15%	24.1	13.7	26.9	15.1	16.4	20.8
± 5-10%	26.0	14.5	21.1	20.1	29.1	21.6
± 0-5%	22.1	16.0	18.6	23.1	36.3	21.9
Minimal majority/ Dauer-Kelsay Index	xb 44.3	40.1	43.3	42.1	44.6	42.4

aNorthern constituencies, which are not districted by reference to provincial electoral quotients, have been excluded. N(1966) = 262; N(1976) = 279; N(1987) = 292.

boundaries. Over two-thirds of all seats in the 1987 redistribution fall within 10 percent of their provincial quotient, marking a considerable improvement over the earlier two redistributions. As John Courtney has observed, such figures suggest that "the latest commissions, acting independently of one another, had accepted more than either of the earlier ones a greater degree of population equality as the principal standard to be applied within their province" (1988a, 13–14).

The summary measures of relative vote equality presented at the bottom of the table reveal only modest, and uneven, improvements over the course of the three redistributions since 1966. In part, this reflects the relative success with which each of the three maps achieves a relative equality of total population. In conditions of near-perfect equality of population size, these index scores (representing the proportion of population residing in the smallest number of seats needed to elect a majority government) would be just over 50. While Canada's last three electoral maps fall short of that goal, the shortfall is not particularly large. For illustrative purposes, Canada's index score of 44.3 in 1966 compares favourably with the index score of 40.1 for the Australian House of Representatives in 1966 (Rydon 1968, 137).

<sup>&</sup>lt;sup>b</sup>The hypothetical minimal proportion of the population/electorate necessary to elect a majority government. See discussion in text.

In sum, it would appear that the 10 provincial boundary commissions have generally been successful in achieving a significant degree of population equality when measured with decennial census population figures with which they are expected to work. From the perspective of democratic theory, however, what are desired are electoral districts that are as equal as possible in terms of the number of voters. When the objective is to design districts to achieve a relative equality of the vote, measures of equality ought to be based on numbers of eligible electors, or actual voters, and not on numbers of residents (Silva 1968, 60–61). The second column for each set of boundaries in table 4.1 illustrates the distribution of riding deviations around the various provincial electors quotients and the appropriate minimal majority or Dauer-Kelsay Index scores.

These figures strikingly reveal that the degree of equality of constituency populations achieved through the boundary commission process translates poorly into a relative equality of the electors by the time of the first election. By the time the boundaries are first implemented, a significant proportion of seats exceed the plus or minus 25 percent threshold (almost one in three in the 1966 redistribution). While the performance of the last two sets of boundaries is somewhat better on this measure, it is clear that population equality, as aspired to by the boundary commissioners, is no guarantee of the equality of electorates at election time.

In part, the discrepancy between the distribution of deviations around the two quotients for each set of boundaries reflects inherent differences between the two population bases. However, as noted above, the Canadian population as a whole exhibits high levels of residential mobility. The fact that seven or eight years elapse between the date of the census and the date of the first election fought on the boundaries determined using census data contributes significantly to the decay of equality achieved by the boundary commission process. Over such a long period of time, migration and other demographic processes can significantly alter the size and age profile of a constituency, thereby contributing to the number of sizable deviations around provincial electoral quotients. Clearly, reducing the time necessary to complete the boundary redistribution process will contribute to the maintenance of relative equality of electorates, regardless of the population base used (see Courtney 1988a, 11–14).

The temporal decay of equality (or developmental malapportionment) reflected in the discrepancy between the census population figures and the size of electorates in the first election is only the tip of the iceberg, however. Tables 4.2, 4.3 and 4.4 illustrate dramatically the

progressive erosion of relative equality over the life-cycle of each of the last three sets of boundaries. Measures based on population figures and the size of electorates are presented in the same time series, since both are related dimensions of the issue of the equality of districts. However, one should be mindful that these are different population bases.

In tables 4.2, 4.3 and 4.4 is documented the extensive decay of the relative vote equality achieved by provincial boundary commissions over time. At the time of the last election held on 1966 boundaries (1974), for example, virtually four in every ten ridings exceeded 25 percent of their respective provincial electoral quotients. Similarly, the last election held on 1976 boundaries (1984) saw more than one in five ridings exceed the 25 percent threshold of tolerable deviations. Even though the current boundaries have only been used once, projected population figures calculated for 1991 suggest just under a fifth (17.4 percent) of all districts would exceed the 25 percent tolerance if an election were to be called this year. In all sets of boundaries, the increase in the proportion of constituencies exceeding the maximum permissible deviation from provincial quotients has been accompanied by a decline in the proportion of seats falling very near the quotients.

Table 4.2
Temporal decay of the relative equality of constituencies – 1
Distribution of deviations from provincial quotients, 1966 boundaries (percentage of all constituencies a)

	1961 population	1966 population	1968 electors	1971 population	1972 electors	1974 electors	1976 population
> ± 25%	0	19.5	29.0	34.4	38.6	39.7	44.3
± 20-25%	10.7	11.1	14.9	8.4	8.8	10.7	11.1
± 15-20%	17.2	15.7	11.8	9.9	10.7	10.3	12.2
± 10-15%	24.1	12.2	13.7	17.6	15.3	13.4	10.7
±5-10%	26.0	16.4	14.5	15.3	11.8	13.7	11.8
± 0-5%	22.1	25.2	16.0	14.5	14.9	12.7	9.9
Minimal majority Dauer-Kelsa Index <sup>b</sup>		42.0	40.1	39.1	38.4	37.8	36.1

 $<sup>^{</sup>a}$ The Northern constituencies of Nunatsiaq, Western Arctic and Yukon have been excluded. Remaining N = 279.

<sup>&</sup>lt;sup>b</sup>The hypothetical minimal proportion of the population/electorate necessary to elect a majority government. See discussion in text.

Table 4.3

Temporal decay of the relative equality of constituencies – 2

Distribution of deviations from provincial quotients, 1976 boundaries (percentage of all constituencies<sup>a</sup>)

	1971 population	1976 population	1979 electors	1981 population	1984 electors	1986 population
> ± 25%	0	9.3	14.7	19.0	21.5	26.1
± 20-25%	9.0	12.9	11.1	11.5	14.4	13.6
± 15-20%	24.3	13.9	15.8	16.4	13.6	14.0
± 10-15%	26.9	16.9	15.1	16.8	16.9	18.6
± 5-10%	21.1	20.8	20.1	19.7	15.1	15.4
± 0-5%	18.6	26.1	23.1	16.5	18.6	12.9
Minimal majority Dauer-Kelsay Index <sup>b</sup>		42.7	42.1	40.7	40.4	39.1

<sup>&</sup>lt;sup>a</sup>The Northern constituencies of Nunatsiaq, Western Arctic and Yukon have been excluded. Remaining *N* = 279.

Table 4.4

Temporal decay of the relative equality of constituencies – 3

Distribution of deviations from provincial quotients, 1988 boundaries (percentage of all constituencies<sup>a</sup>)

	1981 population	1984 electors <sup>b</sup>	1986 population	1988 electors	1991 population <sup>c</sup>
> ± 25%	1.7	18.9	8.3	12.3	17.4
± 20-25%	6.1	7.9	8.6	10.3	8.9
± 15-20%	10.2	14.7	10.3	13.0	11.7
± 10-15%	16.4	15.8	17.8	20.8	14.7
± 5-10%	29.1	21.2	24.3	21.6	26.0
± 0-5%	36.3	21.6	30.8	21.9	21.2
Minimal majorityd/ Dauer-Kelsay Index	44.6	44.1	43.5	42.4	42.1

 $<sup>^{8}</sup>$ The Northern constituencies of Nunatsiaq, Western Arctic and Yukon have been excluded. Remaining N = 292.

<sup>&</sup>lt;sup>b</sup>The hypothetical minimal proportion of the population/electorate necessary to elect a majority government. See discussion in text.

<sup>&</sup>lt;sup>b</sup>Transposition of results of the 1984 enumeration onto the 1988 boundaries, done by Elections Canada.

cLinear projection based on rate of population change between 1981 and 1986.

<sup>&</sup>lt;sup>d</sup>The hypothetical minimal proportion of the population/electorate necessary to elect a majority government. See discussion in text.

A similar message can be taken from the minimal majority and/or Dauer-Kelsay Index scores, all of which decrease significantly over the life of the boundaries. These figures confirm that developmental malapportionment is a serious problem from the perspective of a concern with the relative equality of constituencies, whether conceived of in population or electors terms. While the more recent boundaries seem to have performed slightly better over the available time series, glaring inequalities in the size of ridings are discernible in the later time points for even the 1976 and 1988 boundaries.

While malapportionment is normally measured when boundaries are introduced, these tables demonstrate that whatever inequalities are tolerated at the outset tend to be magnified by the operation of demographic processes through time. While a principled defence of the initial inequalities on any of the several non-egalitarian criteria of districting (e.g., community of interest and remoteness) could be offered, the same cannot be said of those inequalities resulting from the decay of relative riding equality over time. Developmental malapportionment springs not from principle but rather from the dynamics of growth and decline in Canadian society.

In light of this, a strong rationale can be offered for moving to more fluid redistricting in the interest of preserving the relative equality of constituencies. The prospect of moving to an elector-based process opens the possibility of re-evaluating the relative equality of constituency electorates after every election, instead of doing so after every decennial census. Since elections must be held at least every five years in Canada, the current assessment period for boundaries would be cut at least in half.

## THE RELATIONSHIP BETWEEN CONSTITUENCY POPULATIONS AND ELECTORATES

Such a reform could easily be made if the ratio of voters to total population did not vary across constituencies. If this variance did not occur, the two population bases could simply be interchanged without affecting the electoral map. Indeed, there are those who argue that the two are similar enough for them to be reasonably taken as interchangeable (McKay and Patterson 1971, 76). For example, in her review of the American judicial decisions that constituted the "reapportionment revolution" in that country in the 1960s, Ruth Silva noted that "the general assumption has been that it is inconsequential whether total population or citizen population or voting population is used as the population base for apportionment and districting. As a matter of fact, the Supreme Court spoke of 'residents, or citizens, or voters,' as though apportionment on any of these three bases would result in voter equality" (Silva 1968, 56).

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In a similar vein, when commenting on the Alberta, Saskatchewan and Quebec practice of districting on the basis of electors rather than population, Kenneth Carty noted that this "probably makes a difference only in those few urban areas with high immigrant populations and thus disproportionately large numbers of noncitizens" (1985, 280).

Others, however, have stressed the disparity between electors and voters in constituencies (e.g., Silva 1968; Cameron and Norcliff 1985, 33). As Carty's comment suggests, the difference is greatest in urban and suburban ridings that are disproportionately populated by immigrant (noncitizen) and young families with underage children. In fact, Cameron and Norcliff have argued that "the use of population instead of number of electors [in the Canadian districting process] led to some unusual anomalies ... It transpires that non-electors are quite unevenly distributed so that population alone is not a good basis for districting on the 'one person, one vote' principle" (1985, 33).

Potential critics may use this disparity between the total number of residents and the total number of electors to argue against the reform proposal. After all, members of Parliament will be expected to represent the interests of all residents, not only those who cast, or are eligible to cast, a ballot on election day. Prisoners, children, immigrants and those inadvertently left unenumerated by the electoral process are all entitled, by this argument, to consideration by their elected member. If electors are used to determine boundaries, there would conceivably be a large disparity in the number of people that members would be required to serve since the ratio of electors to total population varies across constituencies. This might lead to inequalities in the treatment that residents of different constituencies could expect to receive from their elected representatives. An assessment of the empirical foundations for such concerns constitutes the focus of this section.

Others committed to a more radical vision of vote equality might contend, however, that such a reform does not go far enough. If a relative equality of the vote is what is desired, then districting ought logically to proceed on the basis of the number of votes cast in elections (see Silva 1968). This argument is seldom advanced seriously in Canada, but it is occasionally heard in the United States, where the distinction between eligible (i.e., registered) electors and voters is less stark. In the past, for example, the state of Arizona used votes in its gubernatorial election as the basis for redistricting (ibid., 59–60). In the United States, both registration and voting rely on some modicum of citizen initiative, while in Canada the compilation of electoral lists is regarded as a public responsibility. As such, the empirical relationship between voters and registration is likely to be stronger in the United States than in Canada.

Despite its appeal on the grounds of logic, there does not appear to be any strong constituency of support for the notion of districting by voter turnout levels in Canada. Unlike the United States, voter turnout at federal elections in Canada is relatively high, thereby reducing the likelihood that differential turnout across constituencies will cause serious or sustained dilution of the relative voting power of citizens. Furthermore, variations in turnout reflect a variety of often ephemeral influences (such as the weather on election day and the local competition between parties and candidates; for an exploration, see Eagles 1991). There seems to be little compelling rationale for incorporating such influences into the process of drawing electoral boundaries.

To assess the criticisms of those wishing to retain the status quo with respect to districting and explore some of the larger representational impact of the proposed reform, it is necessary to consider the empirical relationship between electors and total population in Canadian constituencies. Unfortunately, a clear-cut measure of the relationship is unavailable, as census and electoral data are collected by different organizations, for different purposes, at different times. In general, the longer the interval separating the census date from the time of electoral enumeration, the more "noise" arising from the operation of demographic changes will distort the measured relationship. Accordingly, in the following analysis, attention will be focused primarily on those available data points that are as proximate in time as possible.

The data presented in table 4.5 reveal a number of things about the general relationship between the number of residents and electors. Broadly, the data reveal that while considerable differences exist in the magnitudes of the two measures of constituency size, these two measures are strongly correlated. On average, approximately two-thirds of constituency residents are included on electors lists (the proportions range from a low of 54 percent to a high of 69.6 percent). The correlation coefficients suggest that there is a very strong positive relationship between variation in constituency population and size of the electorate (with only one of the seven coefficients slipping below 0.9).

The amount of time intervening between the different data-collection efforts counsels that caution ought to be exercised in making too much of these relationships. However, this difference cannot account for what appears to be a modest increase in the proportion of residents appearing on the voters lists over the three sets of boundaries. For example, in table 4.5 a constant interval separates census counts and electoral counts. However, a comparison of the first and last census-election pairs reveals that only 54 percent of total constituency popula-

Table 4.5
The relationship between the number of electors and total population

	Mean difference a	Mean ratio	Minimum ratio	Maximum ratio	rb	Nc
1966 boundaries						
1966 population/1968 electors	34 856	54.0	34.3	74.7	.94	262
1971 population/1972 electors	32 613	60.3	32.7	75.2	.96	262
1976 boundaries						
1976 population/1979 electors	27 710	66.3	33.4	81.2	.93	279
1981 population/1979 electors	32 535	63.5	36.1	83.9	.90	279
1986 population/1984 electors	30 475	67.3	41.6	81.6	.96	279
1988 boundaries						
1986 population/1984 electors	29 405	66.4	43.6	80.7	.88	292
1986 population/1988 electors	26 168	69.6	41.3	81.5	.92	292

<sup>&</sup>lt;sup>a</sup>The difference measure is defined as: Difference = (Population - Electors). The ratio measure is defined as: Ratio = (Electors/Population) x 100.

tions in 1966 appeared on the 1968 electors lists, whereas the figure for the 1986 population–1988 electors relationship was almost 70 percent. This trend is somewhat surprising, given that immigration has probably increased the number of adult noncitizens in many constituencies since 1966.

It is well known that disproportionate numbers of immigrants to Canada choose to settle in urban areas. As such, it is likely that the ratio of electors to total population varies along a rural—urban dimension. The data presented in table 4.6 provide some qualified support for this view of the most recent set of boundaries. The summary measures of the strength of the relationship between total population and electorates, as measured by the correlation coefficients (*r*), show it is weakest in the "all urban" constituencies. However, there is not a linear increase in the strength of the relationship as constituencies approach the "all rural" extreme, as might be expected. Moreover, the mean ratio of electors to population does not vary significantly or linearly with the rural—urban nature of constituencies.

It is tempting to suggest in advance that the impact of immigration on the ratio of electors to total population might be complicated by the tendency of immigrants to concentrate primarily in a relatively small number of urban centres. Perhaps the problem of under-counting enrolment among Canada's Aboriginal people accounts for part of

 $<sup>^{\</sup>mathrm{b}}$ The r measures are Pearson product moment correlation coefficients. All coefficients are statistically significant at p < .000.

<sup>&</sup>lt;sup>c</sup>Northern constituencies have been excluded from these calculations.

Table 4.6
Rural-urban differences in the relationship of constituency electorates and total populations: descriptive measures
(1988 boundaries)

Mean difference <sup>a</sup>	Mean ratio	Minimum ratio	Maximum ratio	rb	Nc
33 796	65.2	43.6	80.4	.50	112
30 126	68.6	41.3	81.5	.77	112
30 559	66.4	51.6	77.2	.81	60
24 380	72.7	64.4	81.2	.95	60
24 820 22 287	68.6 71.5	58.8 64.7	80.7 79.0	.96 .97	67 67
25 679	65.9	51.4	75.5	.78	43
26 234	65.1	55.8	72.2	.84	43
20 041	66.4	55.8	73.4	.98	10
18 287	69.1	60.3	77.4	.99	10
	33 796 30 126 30 559 24 380 24 820 22 287 25 679 26 234 20 041	33 796 65.2 30 126 68.6 30 559 66.4 24 380 72.7 24 820 68.6 22 287 71.5 25 679 65.9 26 234 65.1	difference a     ratio     ratio       33 796     65.2     43.6       30 126     68.6     41.3       30 559     66.4     51.6       24 380     72.7     64.4       24 820     68.6     58.8       22 287     71.5     64.7       25 679     65.9     51.4       26 234     65.1     55.8       20 041     66.4     55.8	differencea         ratio         ratio           33 796         65.2         43.6         80.4           30 126         68.6         41.3         81.5           30 559         66.4         51.6         77.2           24 380         72.7         64.4         81.2           24 820         68.6         58.8         80.7           22 287         71.5         64.7         79.0           25 679         65.9         51.4         75.5           26 234         65.1         55.8         72.2           20 041         66.4         55.8         73.4	difference a         ratio         ratio         ratio         rb           33 796         65.2         43.6         80.4         .50           30 126         68.6         41.3         81.5         .77           30 559         66.4         51.6         77.2         .81           24 380         72.7         64.4         81.2         .95           24 820         68.6         58.8         80.7         .96           22 287         71.5         64.7         79.0         .97           25 679         65.9         51.4         75.5         .78           26 234         65.1         55.8         72.2         .84           20 041         66.4         55.8         73.4         .98

<sup>&</sup>lt;sup>a</sup>The difference measure is defined as: Difference = (Population - Electors). The ratio measure is defined as: Ratio = (Electors/Population) x 100.

dElections Canada officials classify all polling districts as either urban or rural. Constituencies are then grouped according to geographic size and the relative proportion of rural and urban polls within their boundaries. Polls in the "all urban" category are classed as "urban"; and the "mostly urban" category comprises constituencies with more urban than rural polls. The "small, mostly rural" category includes ridings with more rural than urban polls that are less than 25 000 square kilometres; the "large, mostly rural" category contains ridings with more rural than urban polls that are larger than 25 000 square kilometres; and "all rural" constituencies contain only rural polls.

the relatively weak relationship between electors and population in the large, mostly rural ridings. To help sort out these complex relationships, multivariate models incorporating these and other sources of variation in the relationship between electors and total population must be developed and estimated using census and electoral data.

Table 4.7 reports ordinary least-squares (OLS) estimates of six models of the electors population relationship (using 1986 census data and 1988 electors). <sup>11</sup> Equation (7.1) serves as a baseline for this analysis, since it incorporates only one variable, the total number of residents in 1986, as an explanator of the size of constituency electorates. Not surprisingly, this single variable accounts for most of the variation in

 $<sup>^{</sup>b}$ The r measures are Pearson product moment correlation coefficients. All coefficients are statistically significant at p < .000.

Northern constituencies have been excluded from these calculations.

the electoral size of ridings (explaining 83 percent of the variation in electors). The highly significant regression coefficient for the population variable suggests that for each additional resident in 1986, the 1988 electors total increased by 0.73. By any standard, this is a robust bivariate relationship.

Table 4.7
The relationship between constituency electorates and population – multivariate models
1988 boundaries, unstandardized OLS regression coefficient
(t-statistic)<sup>a</sup>

			Mo	odels						
	(7.1) Total population	(7.2) (7.1) + Immigrants	(7.3) (7.1) + Citizens	(7.4) (7.2) + Young	(7.5) (7.4) + Urban	(7.6) (7.5) + Aboriginal				
Constant	-2 359.00 (-1.39)	-7 058.90 <i>-</i> (-4.88)	-106 849.70 (-15.00)	8 949.90 (4.66)	8 510.80 (4.34)	7 997.40 (4.11)				
Total population (1986)	.73 (37.40)	.83 (45.95)	.83 <i>(51.33)</i>	.84 (54.92)	.83 (48.40)	.82 (47.01)				
	Percentage									
Immigrants		-279.24 (-12.00)		-401.89 (-17.70)	-409.09 (-17.32)	-400.30 (-16.96)				
Citizens			994.99 (14.90)							
Young people (< 1	15 yrs.)			-662.43 (-10.82)	-636.80 (-9.73)	-570.57 (-8.23)				
Electorate in urba	n polls				10.41 <i>(1.11)</i>	11.21 <i>(1.20)</i>				
Aboriginal people						-166.21 (-2.67)				
Adjusted R <sup>2</sup>	.83	.89	.90	.92	.92	.92				
F=	1 399.10	1 115.70	1 345.40	1 081.30	811.90	664.90				
P<	.0000	.0000	.0000	.0000	.0000	.0000				

Notes: The dependent variable for all models is the number of eligible electors enumerated for the 1988 election. Census data are from the 1986 20% sample census (Canada, Statistics Canada 1988). The Northern ridings of Nunatsiaq, Western Arctic and Yukon have been excluded. N = 292.

<sup>&</sup>lt;sup>a</sup>Normally, a *t*-statistic of greater than 1.65 indicates that the associated coefficient is significant at the .05 level for a one-tailed test. Those above 1.96 are significant at the .05 level for two-tailed tests.

The remaining equations refine this basic model by adding other variables expected to influence the relationship between electors and residents. One source of discrepancy between these totals reflects the presence of immigrants and noncitizens who are included in the population count but are likely to be ineligible to vote. Those coming to Canada from abroad must obtain Canadian citizenship to participate fully in the electoral system. Since some immigrants prefer to retain their original citizenship, remaining in Canada as permanent residents, and since the process of acquiring Canadian citizenship by those who wish to do so takes time, the proportion of immigrants and noncitizens in a constituency are strongly correlated (r = .95).

To avoid potential problems of multicollinearity, measures of citizens and immigrants are not included in the same models. Instead, equations (7.2) and (7.3) explore the impact of each on the baseline population equation. As expected, the number of electors in constituencies is highly sensitive to both factors (both generate large regression coefficients with high *t*-statistics, and both add significantly to the variance explained by the baseline model). The presence of high proportions of immigrants in a riding decreases the percentage of eligible electors, while high proportions of citizens increases the percentage of electors. Since the discussion of electors versus population as bases for districting decisions has tended to focus on the impact of the representation of immigrant groups, this variable was selected for inclusion in the more complex models.

Another potential source of discrepancy between the number of residents and electors may be the presence of families with children too young to vote. To assess this variable, the proportion of total population under the age of 15 in April 1986 (the majority of whom would have been ineligible to vote in the late November election of 1988) was included in model 7.2. As equation (7.4) illustrates, the presence of large numbers of young people decrease the proportion of electors in constituencies, even after controlling for the effects of population size and immigration.

Once immigration, population size and age have been controlled, the rural—urban dimension of constituencies (measured as the proportion of the electorate voting in polling districts classed as urban by Elections Canada) has no appreciable impact on the size of the electorate (model 7.5). The coefficient for the proportion of the electorate living in urban polling districts fails to generate a *t*-statistic sufficient to qualify for an acceptable level of statistical significance, and its inclusion does not produce any increase in the proportion of variance explained over equation (7.4). Neither does including a measure of the

presence of Aboriginal people increase the predictability of the size of constituency electorates (there was no increase in the adjusted  $R^2$  measure in equation (7.6)), although the coefficient for this variable is statistically significant. Thus, while there is some evidence that Aboriginal people are being either administratively or voluntarily disenfranchised by the electoral process (i.e., the more Aboriginal people in a riding, the fewer electors), it is not a particularly important factor when considering the general relationship between electors and total population across constituencies.

Generally speaking, the analyses presented in table 4.7 demonstrate that the relationship between the size of constituency populations and electorates is explained relatively well by a small number of measures. The analysis indicates, moreover, that a shift to elector-based districting would likely be attended by changes to the electoral map in areas with concentrations of immigrants and/or noncitizens or of young families. <sup>12</sup>

# ASSESSING THE POTENTIAL IMPACT OF ELECTOR-BASED REDISTRICTING

The close relationship between total population and the number of electors in constituencies suggests that a shift to elector-based districting would not necessarily produce electoral maps dramatically different from those resulting from the current practice. Two broad sets of issues have yet to be addressed. The first pertains to the probable impact on the distribution of seats in selected rural and urban areas. A preliminary assessment based on an estimate of the situation in 1991 – the census year to be used by the next boundary commissions to create the future electoral map – will focus on the impact on a selection of particularly sensitive areas (currently overrepresented rural areas and urban centres with large immigrant communities). Addressing the second set of issues, an assessment of the potential disruptiveness of the adoption of an automatic system of triggering the boundary revision processes (based on the Australian practice) will be provided. It should be emphasized that forecasting the impact of changes to the districting system is inherently difficult. Conclusions based on these projective analyses, therefore, should be regarded as tentative.

As demonstrated above, the ratio of electors to total population varies as a function of the proportion of immigrants, Aboriginal people and children in the ridings. Electors resident in constituencies now containing many members of these social groups currently enjoy disproportionate voting power, which they would stand to lose as a consequence of the adoption of drawing constituency boundaries with the

number of electors as the population base. For example, because of the combination of the concentration of noncitizens and differential population growth, a vote cast in Toronto's downtown riding of Davenport, Canada's most heavily ethnic riding, in the 1988 election was "worth" almost three times as much as a vote cast in nearby York North; (57.2 percent of Davenport residents were recorded as immigrants in 1986, compared with 31.9 percent in York North.) This advantage enjoyed by citizens in Davenport would be reduced (though not eliminated) by a shift to elector-based districting.

To evaluate the potential effect on existing patterns of representation of this kind of reform, a simulation of the impact on several subregions of a hypothetical redistricting exercise taking place in 1991,

Table 4.8

Estimated impact on the representation of selected sub-regions of a 1991 redistricting exercise, by alternative seat allocation methods and population bases (seat entitlements and proportion of province's seat\*)

	Current no. 1988	t Present system 1991		Enlarged 1991 projected seats		1867/loss- of-one method	
		No.	%	No.	%	No.	%
Urban regions  Montreal population  Montreal electors	23 23	24 24	32.0 32.0	24 24	32.0 32.0	24 24	32.0 32.0
Toronto population Toronto electors	23 23	23 20	23.2 20.2	24 21	23.3 20.4	25 22	22.9 20.2
Vancouver population Vancouver electors	8	9	28.1 28.1	9	27.3 27.3	10 10	28.6 28.6
Rural regions Gaspé population Gaspé electors	6	5 4	6.7 5.3	5 4	6.7 5.3	5 4	6.7 5.3
Northern Ontario population Northern Ontario	11	8	8.1	8	7.8	8	7.3
electors	11	7	7.1	8	7.8	9	8.3

Note: Population/Electors projections to 1991 are based on linear extensions of changes between 1981 and 1986 and 1984 and 1988, respectively.

<sup>\*</sup>The relevant totals for calculating the proportion of seats are:

<sup>·</sup> Quebec, 75 seats in all cases;

<sup>•</sup> Ontario, currently 99 seats; 1991 enlargement projection, 103 seats; and according to the 1867/loss-of-one method, 109 seats;

<sup>•</sup> British Columbia, currently 32 seats; 1991 enlargement, 33 seats; 1867/loss-of-one method, 35 seats.

under various scenarios based on the size of the House of Commons,<sup>13</sup> has been undertaken. The results, together with the current number of seats held by these regions, are presented in table 4.8. The situations of regions in 1991 are extrapolated from linear projections from 1981–86 (in the case of population-based estimates) and 1984–88 trends (in the case of elector-based estimates).<sup>14</sup> No attempt has been made to allow for "community of interest" or other non-equality principles.

Urban areas with concentrations of immigrant families are likely to be the most seriously affected by a change to elector-based districting. Regardless of the size of the House of Commons, however, only metropolitan Toronto would experience any loss of seats under a shift to elector-based districting. In Toronto, this would result in three fewer seats than if the quotient were based on total population. The prospect of removing existing seats would undoubtedly be met with resistance. It is worth noting, however, that if this were implemented as part of a broader reform enlarging the House, the disruption would be minimized. In the context of a move to a House comprising 300 members, for example, Toronto would lose only two of its current seats (from 23 to an entitlement of 21). According to the 1867/loss-of-one method (producing a House with a total of 306 members in 1991), the city would lose only one of the seats it now holds.

Turning to the two rural areas selected (Northern Ontario and Gaspé), reforms to the districting base would have a slightly more complex impact. To begin, there seems to be considerable overrepresentation of these regions in the current system. This, together with a relative loss of population in these regions, will probably require some reduction of representation even under current districting techniques if stricter equality standards are to be enforced. In the case of Gaspé, elector-based districting would result in the loss of one more seat than the population-based method currently being employed, regardless of the size of the House (Quebec's total of 75 seats is a constant in all enlargement scenarios).

However, in the case of Northern Ontario, the projected impact of a shift to elector-based districting for the purpose of pursuing greater relative vote equality is more dramatic and complex than in other settings. The region's loss of population relative to the rest of the province, along with a move to a stricter enforcement of egalitarian considerations in districting, will probably cost the region three seats, even using population as the districting base. However, the region would not gain any seats in the two scenarios in which the overall size of the House would grow. If electors are used in districting and the current size of the House is retained in 1991, the region would lose four seats if the

present number of constituencies is retained. As with metropolitan Toronto, such a loss would be highly unpopular, and it is worth noting that the region would not suffer as dramatically in an expanded House if elector-based districting were used in place of the current population practice. In fact, under the 1867/loss-of-one method, the region would lose only two of its current complement of 11 seats, one less than in the same scenario with population-based redistricting. As such, elector-based districting may appear to be the least disruptive and unpalatable alternative facing the region under a regime of intensified commitment to relative vote equality.

A second consideration raised by the prospect of moving toward a more fluid districting system concerns the disruption that might attend frequent changes in constituency boundaries (Morrill 1981, 35). Redrawing constituency boundaries inevitably introduces uncertainty to the lives of legislators. It is likely, therefore, to be resisted by incumbents. Timothy O'Rourke's study of the impact of reapportionment on six American state legislatures, for example, uncovered five ways in which reapportionment influenced the legislators' performance of their duties:

reapportionment produced (1) higher than normal legislative turnover in all states except Tennessee as a result of subdivision, consolidation, and other modifications of existing districts; (2) alterations in individual electoral fortunes as the result of changes in existing districts evidenced by the number of incumbents who readily noted the extent to which reapportionment had aided or hindered their chances of reelection; (3) modified campaign opportunities as noted, for example, by Oregon legislators who felt that smaller legislative districts made for more manageable campaign expenses; (4) closer legislator-constituency relations in those instances in which reapportionment subdivided populous districts or more difficult legislator-constituency contact in geographically expanded districts created by the consolidation of less populous rural constituencies; and (5) in selected states, changes in legislator characteristics such as age and experience. (O'Rourke 1980, 148–49)

The degree to which these consequences follow redistricting is not constant, of course. Since the extensiveness of the consequences depends in large measure on the degree of malapportionment prior to redistricting (O'Rourke 1980, 3), frequent revisions to the electoral map will probably ensure that the impact of any one revision in these terms is minimized.

#### ENHANCING RELATIVE VOTE EQUALITY

Redistricting may potentially introduce uncertainty in the mind of the electorate, and those supporting Canada's current system of decennial districting emphasize the potential for dislocation of electors and representatives if the life of boundaries is shortened. In the extreme, radical alterations to boundaries may result in a disruption of the Canadian tradition of having representatives maintain residences in their districts. How seriously should these arguments be taken?

While a full assessment of this question must await the discussion of the experience of more fluid districting systems elsewhere, some measure of the potential disruptiveness of a fluid districting system can be taken from a simulation of the need to redistrict through the 1980s in various regulatory scenarios. The idea is to estimate how often redistributions would take place as a result of demographic changes in a districting system that is triggered automatically if a certain proportion of seats in a province crossed a threshold of acceptable deviation from the electoral quotient. If such an assessment of boundaries is to be made on an ongoing basis, some form of permanent voters list must be available (as in the Australian case). However, a variant of this idea would be to assess the boundaries after each election (as is the current practice in Quebec).

Table 4.9 presents the results of an exploratory simulation of the need to redistrict, had such a system been in place in Canada through the mid-1980s. For illustrative purposes, the net change in the size of electorates between 1984 and 1988 (using Elections Canada's transposition of the results of the enumeration of that year onto the current boundaries) is broken down into annual increments, and the adjusted size of constituency electorates each year is calculated. Annual quotients for each province are also calculated and used to evaluate the performance of the ridings with regard to relative electoral equality. From this procedure, a preliminary estimate of the implications of a system for annual boundary assessments can be made. Similarly, by looking only at the situation in 1988, one can find an indicator of a system based on post-election evaluations.

It should be noted that the performance of the boundaries over time is to a large degree contingent upon their performance at the outset. In other words, the boundaries being examined here were determined on the basis of 1981 population totals, with a 25 percent tolerance for deviations. In several instances, federal boundary commissions in various provinces decided to exceed even this threshold to accommodate what they perceived to be "extraordinary circumstances." The results of these design considerations necessarily appear in our assessments of the boundaries, and some boundaries would need to be

Table 4.9
Deviations from provincial electoral quotients, 1984–88, calculated using an annually adjusted electoral quotient

				Percer	ntage of p	rovincial	seats			
Year/deviation from provincial quotients	Nfld.	P.E.i.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.
1984										
> 25%	29	0	0	10	4	4	0	0	4	9
20-25%	0	0	9	20	13	3	7	0	15	16
15-20%	29	0	27	30	9	11	0	0	15	16
10-15%	0	0	18	10	17	15	7	0	19	16
< 10%	43	100	55	30	57	68	86	100	46	44
1985										
> 25%	29	0	0	10	8	6	0	0	8	9
20-25%	0	0	18	20	9	4	7	0	8	19
15-20%	14	0	18	20	11	10	0	0	19	16
10-15%	14	0	18	20	15	18	7	7	23	16
< 10%	57	100	46	30	57	62	86	93	42	41
1986										
> 25%	29	0	0	10	8	9	0	0	8	16
20-25%	0	0	18	30	12	4	7	0	15	13
15-20%	14	0	27	10	8	10	0	0	12	13
10-15%	14	0	18	20	23	17	14	14	27	28
< 10%	57	100	36	30	49	60	79	86	39	31
	07	100	00		10					
1987	4.4	0	0	10	0	10	0	0	10	10
> 25%	14	0	9	10	8	10	0	0	12	16
20-25%	14	0	18	30	15	8	7	0	15	13
15-20%	0	0	18	20	7	12	0	0	15	13
10-15%	29	0	18	10	24	14	50	21	23	30
< 10%	57	100	36	30	47	56	43	79	35	28
1988										
> 25%	29	0	9	10	12	13	0	0	15	19
20-25%	0	0	18	30	11	8	7	0	12	16
15-20%	14	0	27	20	11	13	7	14	19	9
10-15%	14	0	18	0	23	16	50	14	27	28
< 10%	57	100	27	40	44	50	36	71	27	28
Total %	100	100	100	100	100	100	100	100	100	100
Seats	(7)	(4)	(11)	(10)	(75)	(99)	(14)	(14)	(26)	(32

Notes: The 1984 analysis is based on Elections Canada's transposition of results of the 1984 electoral enumeration onto 1988 boundaries. The 1988 figures are based on actual Elections Canada enumeration counts of eligible voters for the election of that year. Counts for the intervening three years are estimates based on linear extrapolations from the rate of change in the number of electors in each constituency over the period 1984–88.

redrawn so as to meet a more stringent standard of relative vote equality. Several such thresholds are included in this study, beginning at plus or minus 10 percent and extending to plus or minus 25 percent.

Since the interest here is primarily in estimating the disruptiveness of a continuous districting regime, it is necessary to focus primarily on the annual rate of deterioration of relative vote equality following 1984. For purposes of illustration, the Australian allowance of one-third of the seats exceeding a given tolerance (in their case, 10 percent) from their state quota (see Courtney 1988a, 19; also Hughes 1986, 128) will be adopted as an "automatic trigger" for the hypothetical redistricting system. Table 4.9 shows that under this arrangement, the need for annual redistricting could hardly be considered excessively disruptive. Accepting the current plus or minus 25 percent standard, no province would require redistricting over the entire period of five years covered. If the tolerance range is tightened to plus or minus 20 percent, one province (New Brunswick) would require redistricting in 1986 (and, if uncorrected, in each subsequent year at this threshold); British Columbia would also exceed the allowable limit in 1988. Moving to a 15 percent range increases the number of provinces that would need to redistrict. At this standard, half of the provinces would require new boundaries in 1984 (Newfoundland, Nova Scotia, New Brunswick, Alberta and British Columbia). Significantly, however, only two provinces would require redistricting over the next four years (Ontario and Quebec).

It appears from this simulation that the effects of a shift to a more continuous system of redistricting to preserve relative vote equality would hardly be excessively disruptive. Since the boundaries being evaluated were themselves drawn to a relatively loose 25 percent tolerance (with some exceptions beyond this range), it should be emphasized that this is a highly conservative test. Indeed, a case could be made that by breaking down the redistribution process into a series of incremental adjustments spread over time, the disruptiveness to the system as a whole would be considerably more modest than the current system of decennial census-based redistricting. (In the most recent revision, for example, all but 13 ridings had their boundaries changed.)<sup>15</sup>

The foregoing analyses suggest that, with the possible exception of metropolitan Toronto, a move to elector-based redistricting would not unduly alter the existing pattern of seat distribution across Canada's regions. Neither would a more extensive reform involving annual or post-election evaluations of existing boundaries create an unacceptable level of flux in Canada's system of representation. These conclusions

are based on simulations involving extrapolations from existing data. They are therefore necessarily tentative. In the next section, an attempt will be made to address the question of the potential impact of such a reform by looking at the performance of elector-based districting systems in other jurisdictions.

# THE EXPERIENCE OF ELECTOR-BASED DISTRICTING SYSTEMS ELSEWHERE

As discussed above, those in charge of reforming the system of redistribution and redistricting in Canada have turned to the Australian model for insight (for a good general discussion, see Courtney 1985, 1988a). The Australian system of redistribution by independent boundary commissions at the state level was explicitly adopted by Canada in the mid-1960s (Courtney 1985; Lyons 1969, 1970). Although the structures for determining boundaries were similar, the process and its operation remain quite different. Whereas Canada retained the idea of redistributions after each decennial census, Australia's system involved a more vigorous pursuit of relative vote equality. In part, this different outlook is reflected within the different ranges for acceptable deviations from state and provincial electoral quotients: in Australia deviations had to fall within 20 percent of the quotient, a figure that was reduced to 10 percent in 1974 (see Hughes 1979, 307), while as has been noted, a range of 25 percent has been maintained in Canada (with occasional exceptions).

Australia has also employed a more fluid system of redistricting to maintain the level of equality achieved by their boundary commissions. Since 1983, redistributions must take place every seven years, and boundary commissioners are instructed to design constituencies to ensure that the number of electors in each district will be equal three and a half years after the map is drawn (Courtney 1988a, 9). With frequent redistributions, the prospect of disruption in the minds of electors and representatives is a real one. As Joan Rydon has remarked:

Redistributions of electoral boundaries are relatively frequent at both states and federal level. This may make for instability in the relation of MPs to their constituents. An individual MP may find that a majority of the electors whose support he must seek are currently the constituents of another member. The individual elector may find that he has a different local member though the pattern of party voting has not changed ... The only constituency which is fixed is that of the state or territory which is the basis for the election of senators and,

increasingly, of legislative councillors. It is clearly known to electors who may be confused as to the particular state or federal electorate in which they must vote. (Rydon 1985, 87)

The potential for confusion, Rydon goes on to argue, derives not only from the frequency of boundary revisions, however. It is compounded by the multiplicity of voting systems in use at various levels and for different bodies in the Australian political system. Moreover, she argues that the complexity is mitigated in large measure by the central role parties play in the Australian system and by the fact that the same parties tend to compete at both the state and federal levels (Rydon 1985). While there is no available analysis of the impact of frequent redistributions on the quality of constituent-MP relations, Rydon argues that they, "like most aspects of Australian politics, are dominated by the established parties and particularly their state organizations" (ibid., 101).

It is interesting to note that studies of the "personal vote" in Australia suggest the personal following of incumbent MPs is generally quite small (capable of accounting for, at most, approximately three percent of the vote). However, the size of this personal following does not appear to increase over time as a result of an MP's attempts to cultivate additional support (see Bean 1990, 263–64). This runs counter to expectations based on the premise that the stability of the constituent-MP relation is an important determining factor in the quality and character of constituency representation. Overall, therefore, it seems doubtful that more stable constituency boundaries would in themselves seriously affect the nature of representation in Australia.

Turning closer to home, several provinces have had a long experience with elector-based districting (Carty 1985; McGuire 1974), but most have not taken full advantage of the possibilities this creates for the adoption of a more fluid boundary revision process. As Carty noted in his review of recent developments in districting at the provincial level, the object for all reform schemes has been to remove the issue of the timing of redistricting decisions from the self-interested control of the legislature in order to make the process more equitable and predictable (1985, 275). Only four provinces retain this traditional practice of ad hoc revisions (Ontario, New Brunswick, Nova Scotia and Prince Edward Island). Among the reformed provinces, Carty distinguished between those provinces tying redistribution to a fixed time interval and those linking redistricting to the electoral cycle. Of the former, Manitoba and Newfoundland have adopted 10 year periods, and Saskatchewan uses eight year cycles. Of the latter, Alberta requires new

boundaries after every second election; British Columbia changes its boundaries after two elections or six years, and Quebec requires a new map to be proposed within 12 months of each election.

With provincial elections necessarily falling within five year intervals (and often occurring much more frequently), the electoral maps in the latter provinces are likely to have a shorter life-cycle, and the timing of their revision is less predictable than in other provinces. If a fluid system of redistricting has disruptive consequences for the system of representation in general, it ought to appear primarily in these systems. Unfortunately, while empirical research into the implications of frequent redistricting is generally difficult to find, it is virtually absent from the literature on representation among Canadian provinces. However, in his review of provincial districting practices, Carty discounted the possibility that differences in the timing of redistricting are likely to have significant consequences: "The differences between these two approaches [i.e., linking redistricting to a fixed or a political timetable] are not likely to be of any major political or administrative significance" (Carty 1985, 276).

An indirect indicator that might shed some light on this question can be taken from the attentiveness of members of provincial legislatures to their constituents' needs. Harold Clarke's survey of representational styles of members of the Legislative Assembly (MLAs) uncovered sizable interprovincial differences in the amount of time elected representatives devoted to constituency service (55 percent of British Columbia MLAs and 47.5 percent of those from Ontario reported spending more than half their time on constituency work, while only a quarter of Manitoba MLAs reported this level of attentiveness; see Clarke 1978, 604). Clarke accounts for the observed variations in constituency attentiveness of provincial legislators by reference to differences in their role orientations, career aspirations, local-cosmopolitan orientations, and the competitiveness and rural-urban nature of their home riding. It is doubtful whether the relationships he found would be greatly affected by the frequency of districting in a province.

However, the recent experience in the province of Quebec suggests that even a fluid districting system may not be immune to the need for widespread and disruptively large revisions to the electoral map. In accordance with requirements to revise electoral boundaries within a year of the last election, the Commission on Electoral Representation produced a preliminary report in September of 1990, using enumeration lists (the last provincial election had been held on 25 September 1989). According to the enumeration results, 13 of the province's 125 electoral divisions exceeded the allowable 25 percent deviation from the

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provincial electoral quotient. Linear projections to 1993 (likely to be the year of the next provincial election) suggest that this number will increase to 30 if no revisions are made (Quebec, Commission 1990, 8, 13).

Accordingly, the boundary commission reported that:

We observed that there were significant imbalances in the representation of electors and that, in all likelihood, the same demographic factors would continue to give rise to the same consequences in the future. The Commission considered that the equality of voting power was compromised. It advised the National Assembly that the establishment of new electoral divisions appeared to be necessary to comply with the criteria established in ... the Election Act. (Quebec, Commission 1990, 16)

The commissioners went on to acknowledge that radical changes to the electoral map were potentially disruptive: "The preliminary report is based on the premise that it is advisable, even necessary, that the boundaries of electoral divisions be as stable as possible" (Quebec, Commission 1990, 18). Notwithstanding this sensitivity to the potential difficulties of rapid and extensive change, the commissioners recommended changing 104 (roughly 83 percent) of the electoral districts. Despite the large number of ridings modified, the Commission's calculations suggested that only 766 000 electors (approximately 16.4 percent of the province's electorate) would be affected (ibid., 19–20).

Opposition to these changes was immediate and intense. At the centre of the controversy was the Commission's decision to abolish six ridings from areas that have experienced, and are expected to continue experiencing, population decline. Three ridings are to be taken from the downtown sections of Montreal Island, one from the region of Gaspé, one from the Eastern Townships and one from the Quebec region. Six new seats would be created in the rapidly growing areas on the peripheries of Montreal, Laval and Quebec. Particularly vocal in their opposition were the local leaders in areas scheduled to lose representatives (Lesage 1990; Normand 1990). In the face of mounting controversy, the president of the Commission on Electoral Representation, Pierre-F. Côté, decided to delay the consultative process by six months in order to consider alternatives to the recommendations.

The current difficulties in Quebec underscore the challenges to electoral cartographers facing the need to redistrict a rapidly changing population into a finite number of constituencies. While some might argue that this controversy reflects badly on the entire system of redistricting,

such a position would be mistaken. At issue in the Quebec situation is neither the frequency of revisions to electoral boundaries, nor the use of electors rather than total population as the base for redistricting decisions. Instead, the concerns being raised have tended to come primarily from those who stand to lose representatives in the revision. This is the first redistricting exercise in which the size of the Assembly has been capped, meaning that for the first time adjustments to the map involve absolute, as well as relative, losses in representation for declining areas.

Regrettably, as more legislatures adopt maximum size restrictions, the task facing electoral cartographers and boundary commissioners will become considerably more difficult and controversial. As such, scenes similar to that unfolding currently in Quebec will likely become more commonplace. No elected representatives will welcome news that their constituencies are being districted away, regardless of how or when this is done. Nor will this be welcome news to the constituents, who will face a reduction in the quality of their representation. According to the logic of collective action, recipients of particular benefits from the representative process are especially likely to mobilize in support of a set of electoral boundaries. As in so many areas of political life, it is difficult to mobilize on behalf of the collective benefit or good, in this case stemming from relative vote equality (Olson 1971). A fluid redistricting system that minimizes (though, as the Quebec case reveals, does not eliminate) the likelihood that extensive changes to electoral maps will be necessary is likely to ameliorate, rather than cause, disruptions to the system of representation resulting from population shifts.

#### CONCLUSIONS

This study has explored a variety of issues bearing on the advisability and feasibility of a move from population-based to elector-based redistricting. The motivation for such a reform is twofold. First, it would allow a purer measure of relative vote equality to be achieved in the districting exercise. This development, it has been argued, would be consistent with the evolving practice of this aspect of electoral administration in Canada and abroad. Second, such a reform would facilitate the adoption of a more fluid, less episodic process of boundary revision, in turn enhancing the preservation of acceptable standards of relative vote equality in the context of Canada's highly mobile and changing society. In addition, this reform would ameliorate the disruptive aspects of necessary boundary revisions by spreading them over a longer period of time than is currently the practice.

The empirical analysis revealed a close relationship between the size of constituency electorates and their total populations. Variations in the strength of this relationship could be explained relatively well by reference to several characteristics of constituency populations. The projected impact on the pattern of regional and sub-regional representation in the next boundary revision was shown to be fairly small. Metropolitan Toronto, with its relatively high concentration of recent immigrants, ineligible to vote, would probably experience the greatest disruption by a shift to elector-based districting. The additional servicing burden placed on MPs from this (or other) affected area might be compensated for by the provision of supplementary staff and resources. Many areas of the country would probably experience no shift in the quality or quantity of representation.

The opportunity to adjust boundaries more frequently than the current decennial process allows also raises concerns of stability and continuity of representation. While these concerns cannot simply be dismissed, the simulated need to redistrict under a scenario of a continuous (annual or post-election) evaluation of boundaries did not suggest that Canadian electors and representatives would be left in a constant state of flux by the proposed reform. Neither did the review of Australian and Quebec practices suggest that the consequences for the quality of constituency representation of fluid redistricting systems are particularly serious. There will likely always be some resistance to redistricting efforts, however and whenever they alter an established pattern of representation. This resistance will be most intense when restrictions on the size of legislatures necessitate a reduction in seats in particular areas. It is important to distinguish these inherent problems arising from the necessary maintenance of relative vote equality from a consideration of the strengths and weaknesses of elector-based boundary adjustment.

In conclusion, the historical trend toward greater equality, which many scholars have taken as characteristic of the development of Canada and other Western societies, shows signs of accelerating as Canada enters the 1990s. This is largely, but not exclusively, a consequence of the impact of the *Canadian Charter of Rights and Freedoms*. In the context of the determination of constituency boundaries, this new situation makes it imperative for Canada to consider innovative ways in which traditional concerns of communities of interest can be blended with the heightened pressures for relative political equality. The adoption of elector-based districting, ideally coupled with a move to a more fluid system of boundary revision, could play a modest yet significant role in ensuring Canada's electoral institutions remain responsive to their changing sociopolitical environment.

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#### ABBREVIATIONS

am. amended

c. chapter

C.A. Court of Appeal

D.L.R. (4th) Dominion Law Reports, Fourth Series

R.S.C. Revised Statutes of Canada

Sask. Ct. Saskatchewan Court of Appeal

S. Ct. Supreme Court Reporter (U.S.)

s(s). section(s)

Supp. Supplement

U.S. United States Supreme Court Reports

W.W.R. Western Weekly Report

#### NOTES

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- 1. A few words on terminology may help clarify the analysis in this section. The terms "districting" and (occasionally) "redistricting" are used to refer to the "boundary adjustment" process. The term "electors" refers to those individuals whose names appear on the enumeration lists prepared by Elections Canada officials prior to an election. The term "voters" refers to the subset of electors who cast a ballot in a given election.
- 2. Other criteria for districting include such qualities as compactness, contiguity and respect for local political boundaries. Compactness normally has been advocated as a safeguard against partisan gerrymandering, and since Canadian districts are drawn by nonpartisan commissions, it is of relatively minor importance in this discussion. Contiguity and respect for local political boundaries can both be viewed as particular expressions of community of interest concerns and hence will not be treated separately here. For a general discussion of districting principles, see Morrill (1981).
- 3. This history has been well chronicled by others. A useful, brief treatment can be found in Grofman (1982); see also Baker (1986) for a retrospective by one of the first academics to identify the "reapportionment revolution."
- 4. Even so, there is a considerable jurisprudential basis in the United States for acknowledging that fair representation may not always result from a

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simple mathematical equality of voting power (for examples, see the decisions on *Fortson v. Dorsey* (1965) and *Burns v. Richardson* (1966); and Dixon 1968a, 476–80).

- 5. This follows the view of Elkins and Simeon that political culture is at best viewed as a residual explanator, suitably used only when other types of explanation are unavailable. A discussion on this view can be found in Elkins and Simeon (1979, 139–40).
- 6. Stricter still is New Zealand's system, which adopts a 5 percent range of tolerable deviation. In practice, however, boundary commissioners there have experienced difficulty in meeting this requirement (Mortin and Knopff 1990, 14).
- 7. Similarly, Kenneth Carty has identified a "measurable change in the direction of greater equality" in the districting decisions at the provincial level concerning seats for provincial assemblies (Carty 1985, 285; also Anstett and Qualter 1976, 155). For a more dated overview of provincial districting practices, see McGuire (1974).
- 8. The electoral list for the 1980 election was omitted from these analyses, since it was not produced by a full door-to-door enumeration but was a revised version of the 1979 list.
- 9. Critics of the minimal majority or Dauer-Kelsay Index frequently point to its unrealistic assumptions that all residents of smaller constituencies will vote for the same party in order to create the minimal majority or that representatives from smaller districts will band together to defeat other legislators (see Schubert and Press 1964, 305). Such criticisms are badly misplaced, as Qualter (1970, 90) rightly pointed out. "What the index does," Qualter continued, "is to remove the emphasis from the extremes of the single smallest or largest district ... and place it on the whole set of the smaller half of the districts ... 'The result is a reliable indicator of the general prevalence of inequalities in representation.'"
- 10. For an assessment that includes the two sets of boundaries proposed but not adopted by boundary commissions since 1966, see Courtney (1985, tables 14 and 16, pp. 159 and 161).
- 11. Ordinary least-squares (OLS) regression analysis is a powerful tool to assess the relationship among a number of predictor variables and a given dependent variable when these are measured at the interval level (as is the case here). For those unfamiliar with these techniques, a useful and non-technical introduction can be found in Wilson (1988, 166–87).
- 12. An inspection of residuals from model 7.6 suggests that high proportions of immigrants themselves are not always associated with low numbers of electors. In the heavily "ethnic" riding of York North, for example, the proportion of electors was higher than predicted. On the other hand, in nearby Davenport (Canada's most heavily immigrant constituency) the proportion

of electors was lower than predicted by the model. At the risk of committing the ecological fallacy, since a higher proportion of Davenport's immigrant community has recently come to Canada (according to the 1986 census, 22.5 percent of its immigrant population arrived after 1978, compared with 10.7 percent of York North's), it is tempting to suggest that as immigrants tend to take out citizenship over time, any underrepresentation of these social groups is likely to be transitory.

- 13. The "present system" is based on the House of Commons comprising a total of 300 MPs (up from the current number of 295). The "1867/loss-of-one" formula would produce a House with 306 members. These are apportioned to the provinces according to calculations contained in David Small, "Briefing notes to Commissioners" (25 October 1990, table 1, p. 7).
- 14. While projections based on linear rates of change undoubtedly oversimplify reality, with only two data points available for population and electors for the most recent set of boundaries, this is the only alternative. Moreover, similar linear projection techniques have been used by elections officials in other jurisdictions (e.g., see Quebec, Commission 1990, 13).
- 15. A similar case regarding the disruptiveness of infrequent and large-scale revisions to the electoral map has been advanced in the British context by Ivor Crewe (1985, 47).

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# ECOLOGICAL COMMUNITIES AND CONSTITUENCY DISTRICTING



## **Doug Macdonald**

RIVERS AND STREAMS are used to define at least a portion of the boundaries of many federal electoral districts in Canada. In Metropolitan Toronto alone, examples abound. Etobicoke—Lakeshore riding is bounded on the west by Etobicoke Creek and on the east by the Humber River, which also acts as the boundary between Etobicoke Centre and York South—Weston and between Etobicoke North and York West. York Centre is bounded on the west by Black Creek and on the east by the Don River, the river that also forms both the northern and western boundaries of Broadview—Greenwood.

Natural borders, primarily streams and rivers but also including others such as heights of land, are traditionally used in Canada as one means of establishing the borders of electoral districts. Section 15 of the *Election Act* of Quebec, for instance, states that "An electoral division represents a natural community" and that the boundaries of such a community can be identified, among other things, by "natural local boundaries."

This study explores a very different concept: the use not of natural boundaries but of ecosystems as a means of establishing the boundaries of electoral districts. This is a new concept that has never been implemented in Canada; if it were, it would produce very different results from the use of natural boundaries. For instance, one way of

defining an ecosystem is by the watershed of a particular river. This criterion would require that lands on both sides of that river (the Etobicoke Creek, for example) be included in the same federal electoral district. Instead of dividing ridings, such rivers and streams, each of which forms the spine of its watershed, might run through a riding's approximate centre.

Two criteria are used in Canada to establish riding boundaries – a process known as "constituency districting." First, all ridings should be approximately equal in population, deviating no more than 25 percent from the norm. Second, "communities," however they are defined, should as much as possible be included within a given riding and, as much as possible, riding boundaries should not divide communities. Of the two criteria, the principle of community representation came first – those elected to the first British parliaments represented towns and shires, not individuals. It was not until the electoral reforms of the 19th century that equality of representation was established as a criterion to be used, in conjunction with community representation, in constituency districting (Stewart 1991a).

Alan Stewart provided the following description of the principle: "The rationale of the principle of community of interest is that electoral districts should be more than arbitrary, random groupings of individuals. They should be, as far as possible, cohesive units, areas with common interests related to representation."

This study explores the concept that one way of defining a "cohesive unit" is by the boundaries of the ecosystem – referred to here as the "natural community" within which a given group of individuals live.

Submissions supporting the use of such a criterion have been made to the Royal Commission on Electoral Reform and Party Financing (RCERPF) and to the British Columbia and Ontario electoral boundaries commissions. The Commission decided, accordingly, to undertake a preliminary exploration of the concept. The study is based upon the literature cited in the notes. No previous study of the subject has been made, in Canada or elsewhere (Stewart 1991b); the treatment here is, therefore, introductory. Examples discussed are drawn primarily from Metropolitan Toronto and surrounding regions of southern Ontario because of the author's familiarity with that area. A more detailed and comprehensive study would allow examination of the concept's potential application in different parts of the country.

The study discusses the practicability of using ecosystem boundaries by briefly reviewing the method of ecological land classification that has been developed during the past 30 years by geographers, resource managers and others. An analysis is then provided of two possible benefits that might accrue from use of such a criterion: (1) enhanced environmental protection if a given ecosystem is located wholly or largely in one electoral district; and (2) a strengthening of the emerging environmental ethic that draws its inspiration partly from a heightened identification of humans with the natural community in which they live. The study concludes that using ecosystem boundaries is practicable in some instances and not in others. Although use of such a criterion would do little to directly improve environmental protection, it is nevertheless warranted when members of the public making representation to boundaries commissions define their community, at least in part, in terms of its ecological characteristics. In those instances, using ecosystem boundaries would further express an emerging environmental ethic.

## PROPOSALS FOR ECOLOGICAL COMMUNITIES AS ONE DISTRICTING CRITERION

Representation Made to the British Columbia and Ontario Electoral Boundaries Commissions and the Royal Commission on Electoral Reform The suggestion that natural regions be included as a criterion for defining community of interest has been advanced in three forums.

On 11 December 1986, Mr. Laurie Gourlay appeared before the Ontario Electoral Boundaries Commission "on behalf of a nonpartisan group of Londoners ... interested in maintaining the natural integrity of Southwestern Ontario." He suggested that the Commission should "recommend electoral boundaries which conform as close [sic] as possible to the natural and physiological borders of the Canadian environment" and that the Commission should be "attending specifically to the needs of recognizable bioregions, watersheds, ecological systems, et cetera" (Canada, Federal Electoral Boundaries Commission 1986). Mr. Gourlay argued that this would serve to better protect the natural environment because "running borders down the middle of a stream serves to divide a natural ecosystem. Upon election, the mandate for considering and preserving the system is then split, often between two competing political philosophies. The onus for insuring equitable care and maintenance of these watersheds often gets lost in the shuffle" (ibid.). Mr. Gourlay went on to argue that the mandate of the Boundaries Commission did not preclude the use of such a criterion, and he advanced a series of recommendations to that end. The Chairman of the Commission, Mr. S.H.S. Hughes, disagreed, stating that beyond the possibility of naming a district after a natural feature, such as the Scarborough Bluffs, the Commission had no mandate to consider Mr. Gourlay's recommendations.

The same suggestion was made by Mr. R.J. Boxwell and colleagues, on behalf of the Green Party of Nanaimo, in a submission (undated) made to the British Columbia Electoral Boundaries Commission. Mr. Boxwell recommended "that the Commission incorporate meaningful natural boundaries ... in delineating electoral boundaries, as a major guideline along with the other important population and human principles" (ibid., 6). Mr. Boxwell pointed to the example of the Nanaimo Electoral District, which is bordered in part by the Nanaimo and Englishman rivers, and suggested that "a watershed ridge instead of a river" be used so that "the entire Nanaimo River watershed is included." He suggested that this would "reduce the number of jurisdictions"; establish a "meaningful natural boundary"; and allow "the logging activities ... which have major impacts" to be contained "within the one electoral district," which presumably would allow them to be better managed (ibid., 4).

Bioregional boundaries were endorsed by the Green Party of Canada in a submission to the RCERPF (Kisby et al. 1990).

## The Concept of Bioregionalism

These recommendations, set forth in the previous section, are similar to the notion of bioregionalism, which argues that human activity should be organized on the basis of regions "whose rough boundaries are determined by natural characteristics rather than human dictates, distinguishable from other areas by particular attributes of flora, fauna, water, climate, soils, and landforms, and by the human settlements and cultures those attributes have given rise to" (Sale 1985, 55). The rationale for bioregionalism is partly environmental protection and partly a "small is beautiful" premise that the quality of life can be improved through decentralization.

Kirkpatrick Sale does not recommend that either political jurisdictions or electoral districts be structured on the basis of natural regions. Presumably, this is not because he would disagree with the concept but because his view of bioregionalism ignores government. "What makes the bioregional effort different ... is that it asks nothing of the [U.S.] Federal government and needs no national legislation, no governmental regulation" (Sale 1985, 169). Rather than political action of that nature, he suggests that bioregionalism calls for increased attention to both the natural characteristics of one's community and its history, followed by changes in values and attitudes that lead to a sense of self-reliance, oneness and "rootedness" (ibid., 4–47).

Beyond identification with the natural community, bioregionalism, as described by Sale, advances a series of values that are very similar to those of other branches of environmentalism such as deep ecology. It is worth noting that other environmentalists who hold similar values

but work to achieve them through explicit political actions, such as Green parties, hold somewhat contradictory views on electoral representation. While endorsing the concept of bioregional constituency districting, the Green Party of Canada also calls for 50 percent proportional representation in the House of Commons – a system in which each voter would cast two votes; one for a riding representative and one for a party – so that a "minority … voice and opinion would be heard in Canada" (Kisby et al. 1990, 3). This would represent a significant move toward the concept of population equality and away from that of community of interest, since half of the votes cast would be on the basis of full population equality. The influence of the ecological criterion would be diminished, therefore, if both Green recommendations were adopted.

#### ARGUMENTS FOR THE USE OF SUCH A CRITERION

As noted above, submissions to the Ontario Boundaries Commission and the RCERPF recommending use of ecosystem boundaries have advanced as their primary rationale the argument that environmental protection activity is hindered when an ecological region is divided into two or more constituencies. Advocates of bioregionalism would undoubtedly concur, but they offer as their primary rationale the changes in values and perceptions they believe would flow from an ordering of human activities in accordance with natural regions. Both arguments are briefly expanded below.

#### **Enhanced Environmental Protection**

Political division of a given ecosystem occurs in two ways. The first is a territorial division in which a given natural region is divided by the borders of either electoral districts or political jurisdictions – municipalities, counties, provinces or international borders. (Territorial division also occurs through the establishment of the administrative districts of agencies such as the Ontario Ministry of Natural Resources or Ministry of Environment.) The second is an administrative division in which responsibility for protection of a given geographic area is shared among a large number of agencies, at all three levels of government, with mandates in such areas as health, natural resources, agriculture, environment and others.

It has been suggested that a number of problems result from these territorial and administrative divisions:

- duplication of effort, which results in inefficiencies and expense;
- "gaps" in which no single agency has primary responsibility;
- turf conflicts between agencies, which divert attention from the task at hand;

 reduction in accountability, since the public does not have a clear idea of the responsibilities of either elected officials or their administrative departments; and

• difficulty in achieving integrated and comprehensive planning and program delivery, since any one agency has responsibility for only one aspect of a given ecosystem.

A 1989 study, *Toxic Water Pollution in Canada: Regulatory Principles* for Reduction and Elimination, suggested that in order to deal with such problems, governments adopt an "ecosystem approach" described as follows:

The ecosystem approach focuses on a geographical area with ecological boundaries, as opposed to a particular jurisdiction with political borders. Ecosystem thinking as a planning tool is in part derived from the regional planning and river basin management concepts in the U.S. in the 1920s. They suggest that all actions taken within an ecologically defined territory must take into account all the interests within the territory ... an ecosystem approach also takes a comprehensive approach in the sense that it encompasses the entire biosystem (physical, chemical, and biological) and includes the land, air, and water. (Muldoon and Valiante 1989, 104)

The study further suggests that setting standards for toxic contaminants not be compartmentalized among land, air and water but instead take into account the cycling of toxins through all three media.

The Royal Commission on the Future of the Toronto Waterfront, the "Crombie Commission," in its 1990 interim report suggested that the ecosystem approach be implemented through such measures as developing provincial-municipal Waterfront Partnership Agreements, improving coordination of policies and programs within the greater Toronto area, and examining how an ecosystem approach can be incorporated in the *Ontario Planning Act* (Canada, Royal Commission 1990).

## **Identification with Ecological Communities**

The ecology movement of the 20th century has a number of origins; one of the most important is the development, in the years between the two world wars, of ecology as a separate branch of biology. Ecology – defined by the 1990 *Cambridge Encyclopedia* as "the study of the interaction of living organisms with their physical, biological, and chemical environment" – uses the ecosystem as its basic unit of study. Because it stresses the interconnections between creatures, including humans, and their environment, the perspective of ecology is in marked contrast

to the perspective that had governed the physical sciences for the preceding 300 years. The scientific method developed by Newton, Descartes and their successors depended upon the separation of the observer from the observed and led to a mechanistic imagery in which the natural world is thought of as a machine, separate from humanity.

This perceived separation between the human and nonhuman worlds was reinforced during the 19th century both by the rapid growth of urbanization and by scientific and technological developments that gave to humanity powers far above those of any other species. The ecology movement of this century is founded in part on the premise that this separation from nature is ethically misguided and ultimately self-defeating. Environmentalism advances the view that humanity is one species among many; humans should strive for harmony with, rather than domination over, the natural forces of the planet and the universe. The principles of bioregionalism are simply another manifestation of the same impulses that underlie wilderness and wildlife preservation, pollution reduction and other objectives of environmentalism. At the heart of environmentalism is people's increased identification with the land in which they live. This is best illustrated by a well-known quotation from Aldo Leopold: "We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect" (Nash 1989, 69).

One possible rationale for using natural regions as another criterion in constituency districting, therefore, is that it is another means of expressing voters' identification with the natural community of which they are a part.

#### IS SUCH A CRITERION PRACTICABLE?

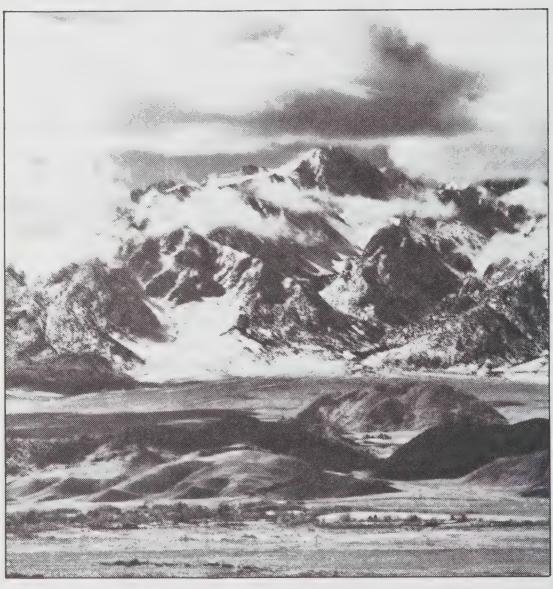
Before considering the merits of the two arguments set out above, it is necessary to determine if the use of ecological criteria for constituency districting is a practical and workable concept. Natural borders, such as a river or mountain ridge, provide a reasonably precise boundary-line, although in the case of rivers, the line may move over time as erosion alters the river's path (Hunt 1974, 185). The boundaries between ecosystems, on the other hand, may not be precise; in some cases, the border-zone between two systems may be several kilometres wide and thus may not provide a clear guide to the establishment of an electoral district's boundary-line. The following sections briefly describe the system used by scientists to delineate natural regions; discuss the problem of imprecise boundaries; and present instances in which ecosystem boundaries have actually been used, or proposed, to establish the jurisdictional boundaries of administrative agencies.

# **Ecological Land Classification**

Charles B. Hunt (1974) describes the basic elements used to differentiate natural regions. These are as follows:

- the underlying geology;
- landforms the way in which the land has been shaped by forces such as erosion or glaciation;
- climate, in particular temperature and precipitation, considered on both a macro and micro scale;
- · water flow;
- soil type;
- plant and animal life; and
- human land use.

Figure 5.1
Eastern front of the Sierra Nevada



Source: Hunt (1974, 2). Photograph by Robert Ishi.

Using these criteria, Hunt has divided the geography of Canada and the United States, taken as one unit, into 40 natural regions.

In a similar manner, the *State of the Environment Report for Canada* (Bird and Rapport 1986) is based upon a division of the Canadian land mass into 15 "ecozones," which correspond in size to Hunt's "natural regions." The ecozones of Canada are shown in figure 5.2. Land classification on this scale is of limited value for our purposes, however, because each ecozone, other than those in the far north, encompasses a considerable number of federal electoral districts. Smaller ecological land classification units have been identified, however. One of the pioneers working in this area was Mr. G.A. Hills (1959) of the former Ontario Department of Lands and Forests, who provided a classification that divides Ontario into seven "site regions," each of which is subdivided into a number of "site districts."

That work has since been further refined and developed, particularly with the assistance in the 1970s of LANDSAT satellite imagery. An Environment Canada publication, *Ecoregions of Ontario*, divides Ontario into 17 "ecoregions," each of which is subdivided into a number of "ecodistricts" (Wickware and Rubec 1989). Figure 5.3 shows the ecoregions of Ontario, while figure 5.4 shows the ecoregions and ecodistricts of a portion of southern Ontario. For purposes of comparison, although on a slightly different scale, figure 5.5 shows the provincial electoral districts in approximately the same section of southern Ontario. These figures demonstrate that geographic areas defined as ecodistricts are roughly comparable in size to provincial electoral districts outside heavily urbanized areas such as Metropolitan Toronto.

Federal and provincial resource managers and scientists have also developed land classification units smaller than the ecodistrict: in Ontario, for example, the Ministry of Natural Resources has a designation "Areas of Scientific and Natural Interest," many of which are no more than one or two hectares in size.

Thus, it would appear that the science, or art, of land classification has advanced to the point of delineating relatively precisely natural regions on a scale comparable to the size of federal or provincial electoral districts in both urban and nonurban areas.

# The Problem of Imprecise or Imperceptible Boundaries

Using the boundaries between ecosystems as one criterion for the establishment of boundaries between electoral districts would appear to present two major problems:

 Very different ecological regions, such as the Rocky Mountain ecosystem of Ecozone 4 and the prairie habitat of Ecozone 7,

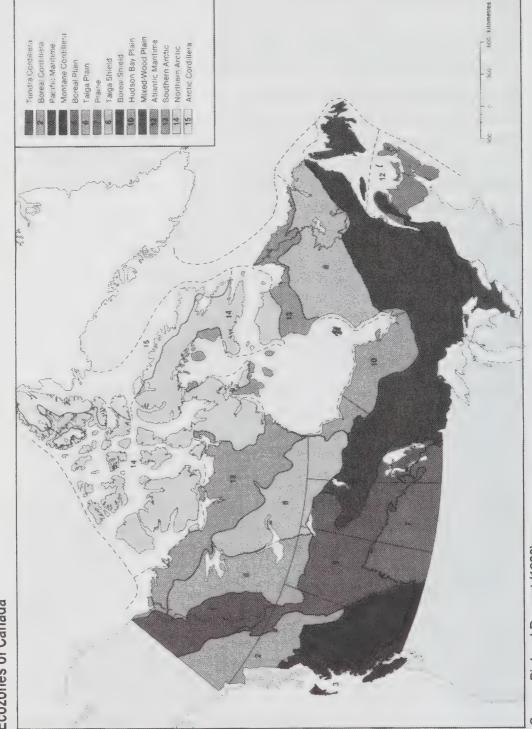
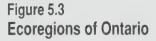
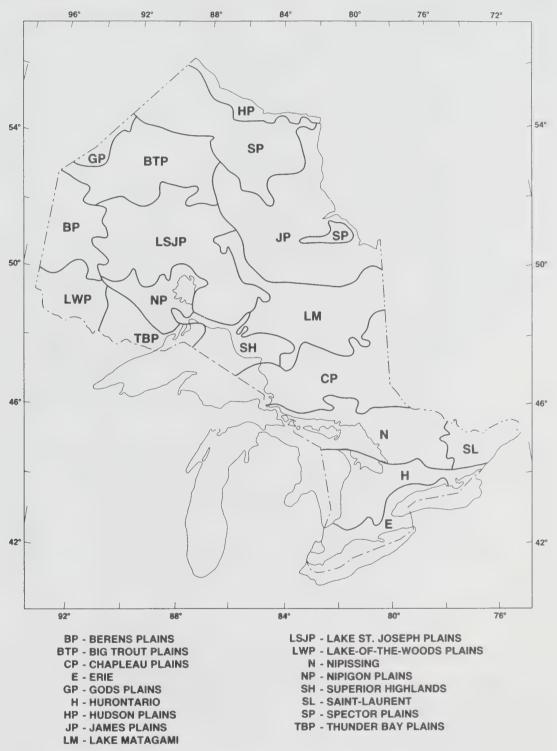


Figure 5.2 Ecozones of Canada

Source: Bird and Rapport (1986).

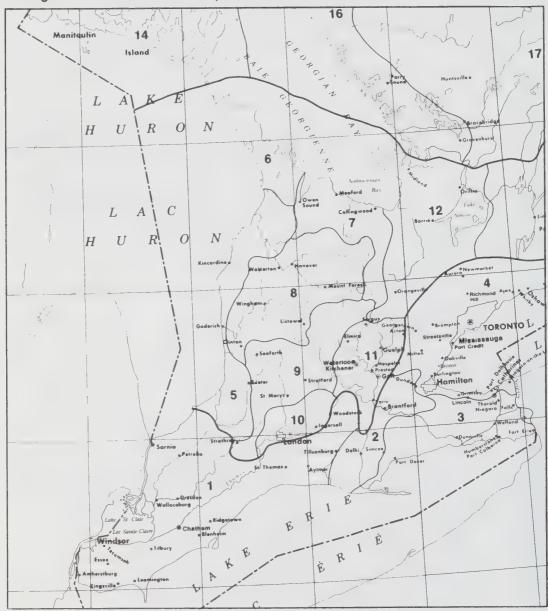




Source: Wickware and Rubec (1989).

shown in figure 5.2, are clearly distinct and different environments, but since the ecosystems blend into one another, the boundary between them may not be sufficiently precise for the purposes of constituency districting.

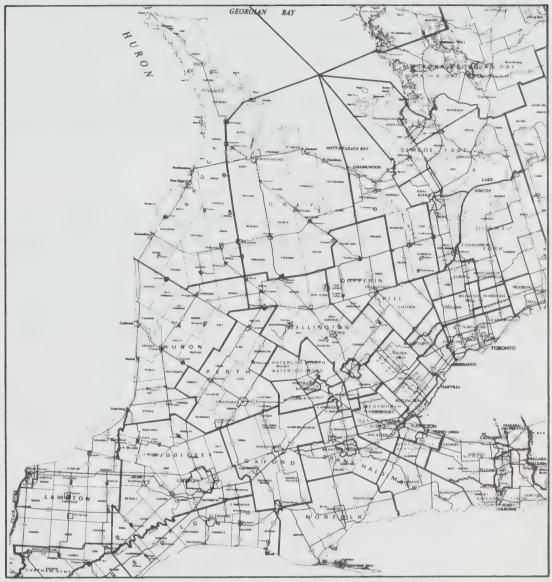
Figure 5.4 Ecoregions and ecodistricts of a portion of southern Ontario



Source: Wickware and Rubec (1989).

• Even if, for purposes of ecological land classification, a clear boundary can be identified, the differences between two ecosystems so delineated may be virtually imperceptible to humans living in them: for instance, residents of Acton and Georgetown (see figure 5.7), in southwestern Ontario, are probably not aware that they live in ecosystems sufficiently distinct to be classified as two separate ecoregions. If an ecosystem boundary were to be used to delineate an electoral district, a way would have to be found both to provide a precise legal definition of that boundary and to mark such a boundary on the ground.

Figure 5.5
Provincial electoral districts in a portion of southern Ontario



Source: Ontario, Elections Ontario (1986).

Possible solutions to these problems are discussed below.

# **Use by Administrative Agencies**

Although Canadian governments have no experience using ecosystem boundaries to establish either electoral districts or political jurisdictions, a number of administrative agencies have been created on such a basis.

# The International Joint Commission

The International Joint Commission (IJC) was created in 1911, two years after Canada and the United States signed the *Boundary Waters* 

Treaty. It is a binational body, with commissioners appointed by both countries, that has a mandate to investigate, when requested by both countries, issues concerning quantity and quality of all rivers and waters crossing the international border. As such, the IJC is a body whose territorial mandate is drawn from ecology. The ecosystem encompassed by its mandate is the total area of all the watersheds of all rivers crossing the Canada–U.S. border. The starting point for this mandate, of course, is political rather than ecological – the location of the international border.

## The Great Lakes Ecosystem

The primary international waters considered by the IJC are the Great Lakes. A number of other government agencies, such as the Great Lakes Fisheries Commission and the Council of Great Lakes Governors and Premiers, have been created to assist in the preservation of this particular ecosystem, as have nongovernment organizations such as Great Lakes United. These bodies have territorial jurisdiction over the watersheds of all rivers draining into the Great Lakes.

The need to coordinate action in this ecosystem led to the signing, in 1972, of the Great Lakes Water Quality Agreement between Canada and the United States, an agreement that was renewed in 1978 and 1987.

#### Ontario Conservation Authorities

The 1946 Conservation Authorities Act provides a vehicle for Ontario municipalities situated within a particular watershed to work together to create a conservation authority whose primary mandate is the coordination of all public and private water-management activities within that natural region. Although not framed by any ecological perspective, the mandate of such bodies – water management – led naturally to the decision that conservation authority boundaries be established on the basis of ecological, rather than political, boundaries.

Figure 5.6 shows the boundaries of conservation authorities in south-western Ontario, which correspond to the boundaries of the watershed within which each is located.

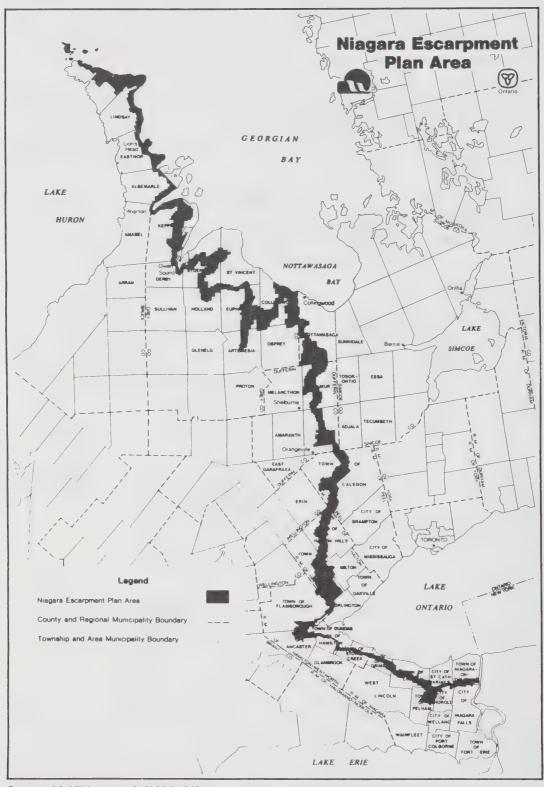
# Niagara Escarpment Commission and Proposals for the Oak Ridges Moraine

Ontario established the Niagara Escarpment Commission in 1973, with passage of the *Niagara Escarpment Planning and Development Act*, as a body with the power to approve planning and land-use development. The Commission's mandate is to "provide for the maintenance of the

Figure 5.6 Conservation authorities in southwestern Ontario USA

Source: Association of Conservation Authorities of Ontario (1989).

Figure 5.7
The Niagara Escarpment plan area



Source: McKibbon et al. (1987, 80).

Niagara Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure only such development occurs as is compatible with that natural environment" (Niagara Escarpment Commission, n.d.).

Figure 5.7 shows the territorial jurisdiction of the Commission. A 1990 report, *Options for a Greater Toronto Area Greenlands Strategy* (Kanter 1990), suggested that the Oak Ridges Moraine, a deposit of clay and other materials forming the southern terminus of the glacial advance some 10 000 years ago, be given some form of comparable protection by the Ontario government. The report describes the moraine as an ecological area with which people identify because of its distinct topography. "The terrain of the Moraine Area varies, but many portions are characterized by a hummocky or hilly appearance. It is this rolling landscape which many people associate as being the Moraine" (ibid., 6). The report goes on to recommend that the Moraine be protected not through creation of a new administrative agency but by declaration of a provincial interest under section 2 of the *Ontario Planning Act* (ibid., 25).

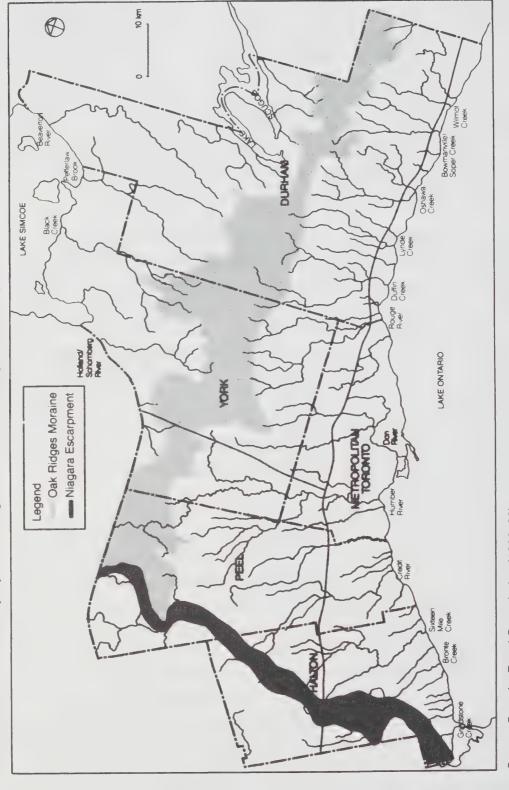
# Royal Commission on the Future of the Toronto Waterfront

The Crombie Commission was appointed by the federal government in March 1988 and became a joint federal–provincial commission in 1989. The Commission's mandate is to examine and make recommendations for the future of an area that can be considered, at least to some extent, as a natural region – the area bounded approximately by the watersheds of the rivers and streams flowing to the Lake Ontario shoreline from Burlington to Newcastle. It should be recognized, however, that like the IJC, the Commission's mandate is primarily determined by political boundaries – the regional municipalities of York, Peel, Durham and Metro, which together make up the greater Toronto area.

The first *Interim Report* of the Commission (Canada, Royal Commission 1989) advanced a number of specific recommendations pertaining to such bodies as the Toronto Harbour Commission and Harbourfront Corporation and then went on to say that "more must be done to protect Toronto's vital regional ecosystem." In its second interim report, *Watershed*, (Canada, Royal Commission 1990), the Commission expanded on this theme, saying that integrated planning and government action had to be undertaken for the "Greater Toronto Bioregion" – an area bounded by the Niagara Escarpment to the west, the Oak Ridges Moraine to the north and east and Lake Ontario to the south (see figure 5.8). The Crombie Commission is one of the first bodies to wrestle with the difficulties of implementing the ecosystem approach to land-use planning and environmental protection.

The discussion above leads to two conclusions: first, it would seem that scientists and resource managers are now able to delineate ecological boundaries with some precision; second, although such

Figure 5.8 The Crombie Commission proposal for a greater Toronto bioregion planning area



Source: Canada, Royal Commission (1990, 22).

boundaries have never been used to establish electoral districts, they have been used successfully for some time for a number of other purposes. It is worth noting that the ecosystem boundaries that have been so used do not correspond to those established through ecological land classification. As can be seen from the preceding figures, the boundaries of conservation authorities or the Niagara Escarpment Commission do not correspond either to each other or to the boundaries of the ecoregions or ecodistricts of the area. It would seem likely, therefore, that if this criterion were to be used for constituency districting, ecological land classification would be a useful instrument, but not the determining factor, for boundary location. That would come, presumably, primarily from the understanding voters themselves have of their natural community's boundaries.

#### **VALIDITY OF THE ARGUMENTS**

This section briefly reviews the pros and cons of the argument set out above for using ecosystem boundaries.

#### **Environmental Protection**

As noted, the two submissions made on the subject advanced as their major argument for use of such a criterion the claim that protection of any particular ecosystem would be facilitated if that ecosystem were encompassed by the borders of just one electoral district. There is agreement that division of an ecosystem on the basis of both territorial and administrative boundaries hampers environmental protection. The International Joint Commission, for instance, in the 1982 First Biennial Report under the Great Lakes Water Quality Agreement made these comments on the problem as it pertains to the ecosystem of the Great Lakes watershed:

The underlying problem ... is the absence of an overall Great Lakes Ecosystem strategy for toxic substances control activities that are being carried out under the various pieces of legislation among the jurisdictions. Programs have been compartmentalized under each legislative mandate, and the resources have been allocated accordingly ... This fragmentation has resulted in duplicated activities in some cases, incomplete program coverage in others, and a limited management capacity to effectively address emerging complex problems. (Muldoon and Valiante 1989, 102–103)

Furthermore, as discussed, the need to include an ecosystem within the territorial mandate of an administrative agency has been

recognized and acted upon before – for instance, in the creation of Ontario conservation authorities or the Niagara Escarpment Commission.

The argument is much weaker, however, in the case of an electoral district, since neither federal nor provincial districts are used in any way as a territorial unit for planning or implementing environmental protection programs. To the extent that electoral districts have any influence at all, the reverse argument could as easily be made - that protection of a given ecosystem, such as a wetland threatened by development, might be given more political support if it is located in several, instead of just one, federal or provincial ridings, since that ecosystem would have more supporters in the legislature or House of Commons. Alternatively, it might be argued that if the threatened wetland is located in just one riding, those pressing for political action to protect such an ecosystem will have a greater likelihood of getting the support of their elected representatives (who inevitably must weigh this case against the other priorities of their constituents). This is because they would have a greater relative weight of numbers compared with those pressing for action on other issues. In other words, political support, in terms of influencing the MP or MPP, would not be diluted by spreading it among several ridings (Stewart 1991b). It is difficult to find a compelling argument on one side or the other.

What is more important, however, is that even in the case of political or administrative boundaries, division of an ecosystem is far from the major factor influencing the degree of environmental protection. Other factors, such as mandates and administrative structuring of relevant government agencies, will almost always play a larger role. Environmental protection is one of many claims competing for finite public and private dollars; it is the degree of political support accorded to the issue, in comparison with other issues, that is of paramount importance. That political support depends, in the final analysis, upon the perspectives and values held by individual Canadians.

Finally, the point must be made that while the difficulties of protecting a divided ecosystem are real, they are not insuperable. This was the major finding of the report, *Great Lakes: Great Legacy?* (Colburn et al. 1990). After an examination of the "institutional ecosystem" of the Great Lakes, the report concluded:

One positive note is the fact that the institutional wherewithal already exists to integrate environmental quality efforts and eclipse the crisis management mode of environmental protection. A remarkable set of

institutions and mechanisms on both sides of the border can support and coordinate the substantial actions that are necessary to reclaim the natural heritage and ecosystem health of the Great Lakes region ... There is no reason to think that a new, single 'super-agency' to manage the Great Lakes region would, in fact, offer an improved institutional framework.

What is needed to rescue the Great Lakes region from its continuing environmental decline is the will to act and the discipline to take a long-term perspective. (ibid., xxiii)

Thus, two conclusions can be drawn. First, the multiplicity of political and administrative jurisdictions is a factor, but not the major factor, influencing environmental protection. Second, division of an ecosystem by electoral district boundaries may influence political support for environmental protection, but it is not clear whether such support would be weakened or strengthened.

#### **Identification with Ecological Communities**

Identification with one's ecological community, summarized by the phrase "the land ethic," and the values associated with that identification are central to the values and objectives of environmentalism. The opinion polls and the attention given to the issue during elections indicate that those values are shared by an increasing number of Canadians. This identification with the natural world is expressed in many ways, ranging from the now common, but still emotionally powerful image of planet Earth seen from space to local political conflicts over proposals to drain, fill and develop a local marsh.

To date, however, this emerging ethic has not found significant expression in the form of a demand that electoral districts conform to ecosystem boundaries. Alan Stewart (1991a) reviewed transcripts of the public hearings held in Ontario in 1984 on provincial electoral districts and in 1986 on federal districts. He identified 31 "indicia of community of interest" ranging from political boundaries to shopping patterns, newspaper catchment areas, language and religion. Ecological criteria were not included.

It is likely that at least some of those who participated in the 1984 and 1986 public hearings felt a degree of identification with their natural community. It did not occur to them, however, that this identification should be expressed in terms of the boundaries of their electoral districts, presumably because it is a novel concept.

Would rising ecosystem boundaries strengthen that identification and its associated values? It seems likely that it would. There are two reasons for suggesting this: first, the novelty of the concept would draw attention to the ecological criterion being used and to the membership of humans in an ecological community; and second, marking the boundary of the ecosystem on the ground, to distinguish between electoral districts, would also draw day-to-day attention to the natural community.

This identification need not be limited to natural areas, such as a woodlot or wetland, located in rural areas. Growing attention is now being paid to the concept of "green cities." This concept encompasses not only pollution control and other aspects of environmental protection in the urban context but also various means of reinforcing natural values within the city, such as allowing some parkland areas to revert to their natural state. The principle of community representation for urban constituency districting, defined by such things as school catchment areas, is well established. Extending the principle to include a definition of community that is based also on waterfronts, greenbelts or other such factors would not be a large step.

#### **EXAMPLES**

This section discusses the implications of basing electoral districts in whole or in part on the boundaries of two Ontario ecosystems – the Niagara Escarpment and the Oak Ridges Moraine. These examples have been chosen, instead of particular Ontario ecoregions or ecodistricts, because their preservation is the object of political lobbying. For this reason, they are likely to be the object of consideration in future boundary hearings; thus their discussion is of more direct relevance.

For convenience, both are discussed in terms of federal districts, but presumably, the same principles would apply to provincial districts.

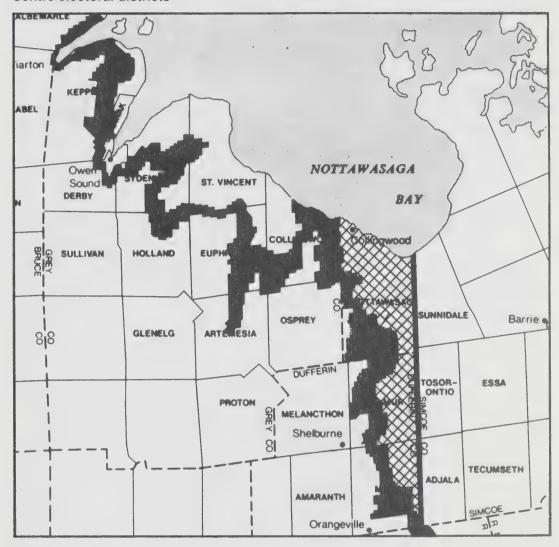
# **The Niagara Escarpment**

The boundaries of the Niagara Escarpment plan area are shown in figure 5.7. The southern end of the planning area is the Canada–U.S. border, which runs through the Niagara River and then north and west to the tip of the Bruce Peninsula at Tobermory. The Escarpment traverses the following eight federal electoral districts: Niagara Falls, Welland–St. Catharines–Thorold, Erie, Lincoln, Hamilton–Wentworth, Halton–Peel, Wellington–Grey–Dufferin–Simcoe and Bruce–Grey.

Obviously the Niagara Escarpment could not be contained within any one district. However, it does appear possible to adjust the eastern border of one district, Wellington–Grey–Dufferin–Simcoe, to corre-

Figure 5.9

Area between the eastern boundary of the Niagara Escarpment plan area and the boundary between Wellington–Grey–Dufferin–Simcoe and York Simcoe and Simcoe Centre electoral districts



Area affected by change in electoral district boundary to coincide with Niagara Escarpment Plan Area

Source: Niagara Escarpment Commission.

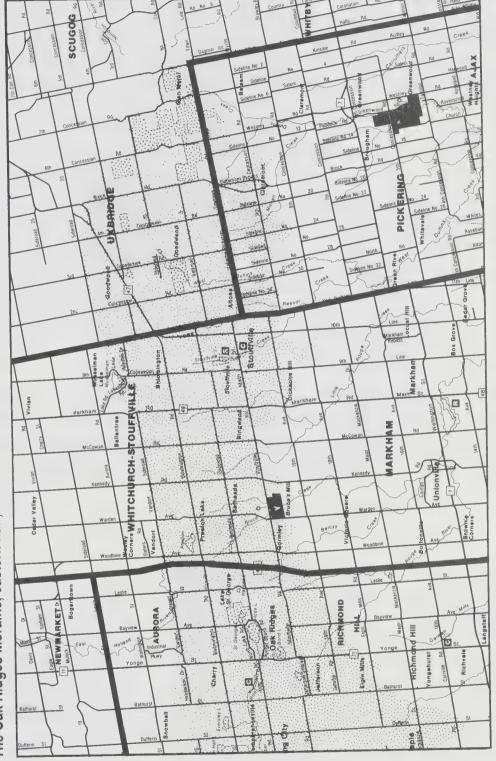
spond to the eastern border of the planning area in that part of the province. As shown in figure 5.9, this would mean moving the eastern border of the district a few kilometres west and transferring the population within that area to the adjoining districts of York–Simcoe and Simcoe Centre. The implications this would have for the criterion of either population equality or community of interest have not been examined.

Figure 5.10 The Oak Ridges Moraine, western half, with federal election districts



Source: Map of the Metropolitan Toronto and Region Conservation Authority with electoral district boundaries added

Figure 5.11 The Oak Ridges Moraine, eastern half, with federal election district boundaries



Source: Map of the Metropolitan Toronto and Region Conservation Authority with electoral district boundaries added.

## The Oak Ridges Moraine

Figures 5.10 and 5.11 show the Oak Ridges Moraine and the boundaries of the relevant federal electoral districts. The moraine traverses, from west to east, the five electoral districts of Wellington–Grey–Dufferin–Simcoe, Halton–Peel, York North, Markham–Whitchurch–Stouffville and Durham.

It might be possible to adjust district boundaries so that they coincide with the boundaries of the moraine in the following manner:

- extend one part of the northern boundary of Halton–Peel above the present boundary of Highway 9 so that it follows the moraine boundary, thus transferring a portion of Wellington–Grey– Dufferin–Simcoe into York–Simcoe and Halton–Peel;
- move the northern boundary of York North south from the existing boundary of Sideroad 18 to the northern boundary of the moraine, thus transferring a portion of York North to York–Simcoe;
- move the eastern boundary of Markham-Whitchurch-Stouffville farther east to encompass the eastern tip of the moraine, thus transferring a portion of Durham district to Markham-Whitchurch-Stouffville.

Although no detailed examination has been done, it does not appear possible to move other electoral district boundaries without causing major changes. The implications that the three possible changes shown above would have for other criteria have not been examined.

#### CONCLUSION

# Possible Approaches to the Practical Difficulties

There are two impediments to using ecosystem boundaries as one criterion among others in defining a "community of interest" to be enclosed within the boundaries of a particular electoral district: first, ecosystem boundaries are not precise; second, they do not necessarily lend themselves to easy identification on the ground. It may be that ecological land-classification methods can be used to determine precise boundaries. As noted, those involved have by now developed considerable experience in translating necessarily imprecise ecosystem boundaries into lines drawn on a map. Although, as discussed, it is possible that riding boundaries based in part on an ecological criterion would not precisely correspond to ecoregions or ecodistricts, presumably that expertise could still be called upon. Once such lines were drawn, they could be given legal validity as electoral districts through surveys like those used to establish land boundaries for property ownership.

#### ECOLOGICAL COMMUNITIES AND DISTRICTING

Identification of such boundaries on the ground, so that voters have no doubt as to which riding they live in, could be facilitated by using natural markers, such as cliffs or heights of land, where possible. Otherwise, markers could be erected.

Such ecologically based boundaries would necessarily change over time, in response to both changes in other criteria, such as population, and changes in the ecosystem itself. This is by no means an impediment to using the concept, however, and in fact would be in keeping both with the normal practice of constituency districting and with the ongoing evolution of the natural world.

# A Further Expression of an Emerging Ethic

Public discussion of the natural boundaries of the community, followed by steps to give those boundaries legal and practical validity for purposes of constituency districting, would inevitably draw attention to, and thereby strengthen, the emerging environmental ethic. Although the resulting electoral districts might not have direct use for environmental protection, such an expression of values in a new form would provide indirect but powerful support to the efforts of voters – and their governments - to preserve the natural communities in which they live. The boundaries of federal electoral districts decided in accordance with this approach might not correspond precisely to other boundaries that are also based on an ecosystem approach such as, in Ontario, those of the local conservation authority. Far from being a drawback, however, such a situation would strengthen the ethic of identification with the natural world. There is no contradiction in seeing oneself as a member of the community defined by the local watershed and also of that community defined by the glacial moraine.

Based on the specific examples discussed above, it is concluded that using ecosystem boundaries may be possible in some instances but not in others. It would appear that the boundaries of the Oak Ridges Moraine, for instance, would only lend themselves to constituency districting in a limited number of cases. In other cases they would conflict too much with other criteria for defining community of interest and equality of population.

In conclusion, therefore, the concept is practicable, in at least some instances, and worthy of further consideration.

#### ABBREVIATIONS

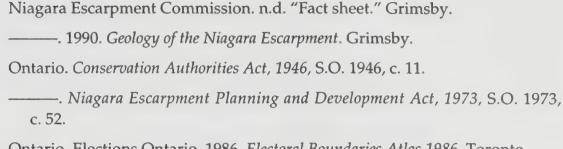
C.	chapter
R.S.Q.	Revised Statutes of Quebec
S.O.	Statutes of Ontario
s(s).	section(s)

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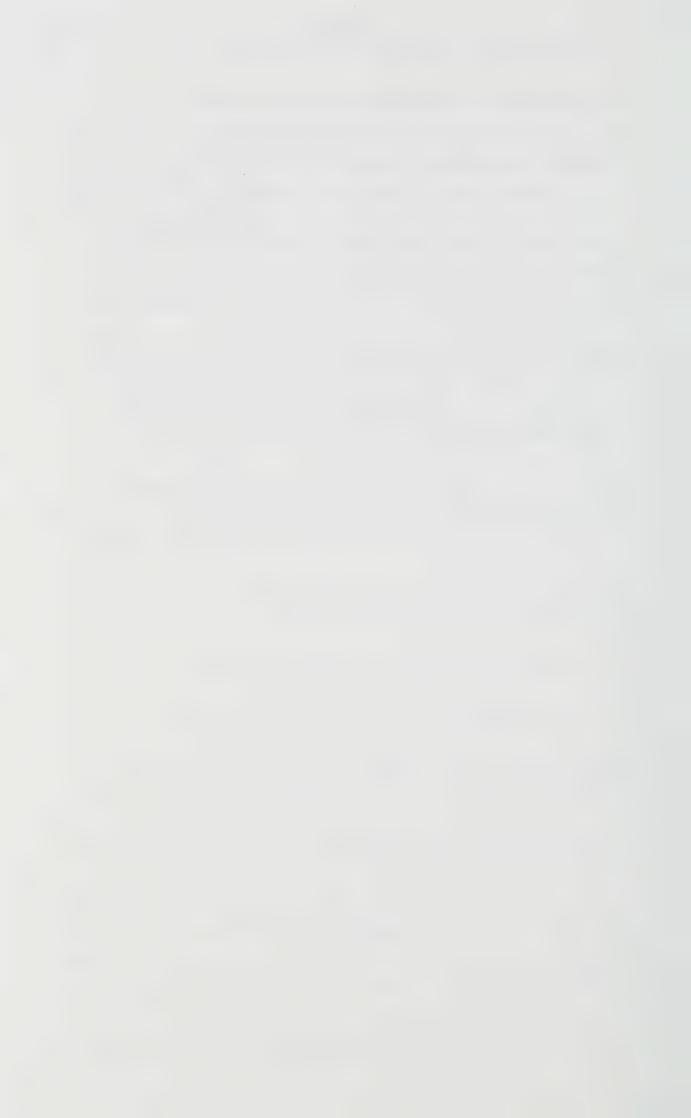
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# IN THE PUBLIC SERVICE Representation in Modern Canada



#### Alan Frizzell

In Canada's form of representative government, eligible voters in geographically defined electoral districts select their representative and expect that representative to fulfil many different roles. Among these is the role in which the member of Parliament is expected to represent his or her constituents either through delegation or adherence to their wishes.

In recent years, members of Parliament have also been called upon to serve their constituents in a more direct way by helping them deal with a government structure more and more intertwined with citizens' daily lives. This is often referred to as the "ombudsman" role of parliamentarians and has come to take up more and more of the members' time.

This role of elected members has been recognized by the Supreme Court in its ruling that every voter is entitled to "effective representation" as a result of the Charter guarantee of the right to vote. Included in the Court's definition of effective representation is the service (or ombudsman) component of a member's duty.

In Attorney General for Saskatchewan v. Carter, the Supreme Court justified a provincial redistricting plan in Saskatchewan which over-represented rural voters. The plan was justified on the grounds that it was more difficult to represent and serve sparse populations spread over large areas than it was in densely populated city electoral districts.

Even with the advent of independent bodies drawing electoral district boundary lines, with populations "as close as reasonably

possible" to a provincial quotient determined by dividing the number of assigned constituencies in a province into its total population, federal electoral districts have consistently overrepresented rural and small town voters at the expense of those living in major cities.

To test the thesis that the more widespread a population is geographically, the more difficult it is to represent, this study will look at representation and service from two perspectives. The first perspective is that of the voters, and the second, that of elected federal representatives. A national survey, designed to discover differences between urban and rural voters, was conducted to ask Canadians what they expected and received from their representatives and how satisfied they were with that "service." For the perception of elected representatives, all members were asked to complete a "View from the Hill" questionnaire. Eighty-three members or 28.1 percent responded.

The first section of the study will report the results of and analyse the findings of the national survey conducted by the Carleton University Survey Centre. The second section will deal with the responses of members of Parliament and point out differences between their perceptions and those of the electors. The summary and conclusions will be discussed in the third section.

#### THE VOTERS' VIEW

To determine the views of Canadians toward their representatives, what they expect from them, and how well these expectations are met, a national survey of 1 743 Canadians was conducted in June 1991. A minimum of 300 voters were included from each of the five regions – the Atlantic provinces, Quebec, Ontario, the Prairie provinces and British Columbia.

Since a major objective of the survey was to assess differences, if any existed, in attitudes of urban as opposed to rural residents, a further stratification was used in the sample. Two electoral districts of each type, as defined in the *Parliament of Canada Act*, were randomly chosen in each province where possible for sample selection.

Under the *Parliament of Canada Act*, electoral districts are classified as follows:

- 1. Urban, contains only urban polls;
- 2. Urban/rural, contains more than 50 percent urban polls;
- 3. Urban/rural greater than 25 000 square kilometres in area;
- 4. Rural/urban, contains more than 50 percent rural polls;
- 5. Rural/urban greater than 25 000 square kilometres in area;
- 6. Rural, contains only rural polls. (Canada, *Parliament of Canada Act*, s. 63; *Canada Elections Act*, Sched. III)

Urban polls are defined by Elections Canada as those in incorporated municipalities with populations of 5 000 or more.

In practical terms, urban constituencies are those contained in major cities where the population is sufficient to warrant more than one electoral district within the city boundaries. Examples include Metropolitan Toronto with its 23 districts, and the six Calgary constituencies. Urban/rural constituencies generally contain one major centre but with a population not sufficient to justify a self-contained electoral district without including some of the outlying rural area. An example of this type of district is Peterborough in Ontario or Medicine Hat in Alberta. The latter falls into the category of more than 25 000 square kilometres because of the sparsely populated areas outside of the city. Rural/urban districts usually consist of a number of small towns but the majority of the population lives in those towns of less than 5 000, or on farms. An example of this type of district is Yellowhead in Alberta. The migration of Canadians to urban centres is evidenced by the fact that there are only 10 entirely rural districts in the 10 provinces. Most of these are found in the sparsely populated northern regions.

While six types of electoral districts are enumerated and accounted for in the survey data, most of the tables in this study consolidate them in one of two ways: urban and urban/rural, rural/urban and rural; or urban, urban/rural, and rural/urban or rural. The distinction depends on whether there is a significant difference in perception from the respondents within these groupings. In some areas of study, there is a great deal of similarity between urban and urban/rural respondents while in other areas, those in urban/rural districts show marked difference from their more urban counterparts.

Since some regions of the country and some types of electoral districts were over-sampled to produce statistically meaningful sample sizes, weighting factors were used to align sample statistics to population parameters. Appendix B provides a detailed explanation of the methodology used for the survey. For national figures, a sample of this size is deemed accurate within 2.3 percentage points 19 times out of 20. For any subgroup or breakdowns the error margin is larger.

The reason for structuring the survey to determine differences between urban and rural respondents, as well as the regional and demographic subsets, is to assess the long-held assumption that rural or sparsely populated areas should be overrepresented in electoral terms. The historical and traditional practice in Canada has been for rural ridings to have smaller populations than urban ridings. W.E. Lyons has commented that the idea that "urban constituencies ought to contain larger populations than rural ones ... was applied with sufficient

regularity throughout the years to qualify as an informal but settled norm" (Lyons 1969).

This idea has been included in the *Electoral Boundaries Readjustment Act*. Section 15 enables the independent provincial boundaries commissions to deviate from electoral districts having populations "as close as reasonably possible" in order to maintain manageable geographic size in sparsely populated or rural areas.

Court rulings have not only buttressed this argument but have tied it into the questions of servicing and effective representation when ruling on the constitutionality of deviations from the "one person, one vote" standard. For examples of this argument and results of Court rulings, see *Dixon v. British Columbia (Attorney General)* (Supreme Court of British Columbia) and *Attorney General for Saskatchewan v. Carter* (Supreme Court of Canada).

Before the Supreme Court, the Saskatchewan Attorney General argued that:

There are a number of important reasons why rural areas warrant some special consideration in the boundary drawing process. Simply put, it is more difficult to represent a rural area than an urban area:

- a. The physical size of rural ridings makes it difficult for an elected representative to meet his constituents on a regular basis.
- b. The time demands presented by travel in a rural riding mean that a member has less time to perform his general responsibilities.
- c. Personal communication in rural areas is difficult.
- d. Rural constituencies, by virtue of their physical size, often embrace several distinct communities. This make[s] it more difficult to secure effective representation.
- e. Rural areas often display a broader range of interests and concerns than urban areas. A rural riding can contain a large town, farming areas and resource and industrial operations. (Saskatchewan 1991, 49–50)

In its decision, the Supreme Court of Canada upheld these arguments and ruled that overrepresentation of rural areas compared to urban ones was justified in the interests of effective representation, a right it said flowed from the Charter (section 3 guarantee of the right to vote).

The 1987 redistricting of electoral ridings, as table 6.1 clearly illustrates, shows the practical result of overrepresenting rural areas.

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Table 6.1

Type of electoral district	Average % deviation from provincial quotient	Number of electoral districts
Urban	6.8	112
Urban/rural	1.1	59
Rural/urban	-5.2	67
Rural/urban (more than 25 000 km)	-7.5	44
Rural	-14.3	10

Table 6.2 (percentages)

Q10. Some people feel that in sparsely populated areas ridings should be limited in size even if this means there is a smaller population than in, for example, urban ridings. Others feel that all ridings should have roughly the same population base. What do you think?

	Overall	Urban Urban/rural	Rural/urban Rural
Population	51.2	50.7	48.4
Geography	28.1	27.6	30.4
Mixed	12.0	11.8	10.6
Other	0.8	0.9	1.2
Don't know	7.9	8.9	9.4
(N = 1 743)			

Note: Percentages may not add to 100 due to rounding.

Put another way, a representative in an urban electoral district must serve five people, on average, for every four served by a representative in a rural district of the same province.

However, while survey respondents believe that services would suffer if electoral districts increase in area or population, the majority of those expressing an opinion believe that all districts should have roughly the same population base, whether urban/rural or rural and rural/urban.

Even in the most sparsely populated districts encompassing the largest geographical size, the majority of those who stated their opinions chose "roughly the same population base."

When asked why respondents feel services would suffer, more than half of those with opinions (56.4 percent) say they equate service from their representative with population, explaining that a larger population would result in less service. However, more than one in ten (11.5 percent) claim that the size of electoral districts is irrelevant to the quality of service delivered.

As to what services they want from their member of Parliament, the greatest number, when given a list of members' tasks, say representing their constituents' views in Parliament is most important, followed by

Table 6.3 (percentages)

Q12. If ridings were made larger in area or population, do you feel services would suffer?

	Overall	Urban Urban/rural	Rural/urban Rural
Yes	61.6	58.6	59.7
No	24.5	24.0	24.4
Don't know/Other	13.9	17.4	15.9
(N = 1 743)			

Table 6.4 (percentages)

Q8. Thinking about your own member of Parliament for a moment, what would you say is the most important service he or she should provide to you as an individual voter?

	Overall	Urban Urban/rural	Rural/urban Rural
Representing constituents	31.8	33.1	27.1
Providing information	20.5	20.2	23.5
Other	26.3	26.6	24.7
Don't know	21.4	20.1	24.7
(N = 1 743)			

being personally available and explaining government thinking (Question 5, pp. 288–89).

In rating the importance of these tasks, there are few differences between respondents from the different types of electoral districts. The exception is "getting government projects and services the riding needs," ranked by fewer than half (48.5 percent) of those in urban and urban/rural constituencies as "very important," compared to by more than half (53.6 percent) in predominantly rural districts.

There is a pronounced difference in the perception of the roles of members of Parliament between English- and French-speaking Canadians. More than one third of French-speaking Canadians (35.3 percent) believe that the most important responsibility of the member is to represent their region of the country. In comparison, less than one-fifth (19.6 percent) of anglophones are of the same view.

Taking tables 6.5 and 6.6 together, most Canadians want their representatives to reflect their concerns and, with the exception of francophone Quebec, see those concerns in a somewhat parochial manner. There is no significant difference between urban and rural respondents on these perceptions.

The quite different francophone perception from that of anglophone Canadians may explain the historic tendency of francophones in Quebec to bloc vote for one party or another in what they regard as a regional or cultural self-interest. Only by acting collectively in elections are they able, as a minority group within defined geographical boundaries, to protect their perceived interests. Their perception of the importance of their members representing their region of the country would appear to reinforce this thesis. Francophones in Quebec, a minority in Canada, look to their members of Parliament as one way of providing collective protection for their province.

The survey results indicate that rural or small urban centre residents are linked more personally to their members than are those in major urban centres. Only 23.2 percent of those in urban districts were able to name their member of Parliament compared to 46.3 percent in urban/rural districts, 45.2 percent in rural/urban districts and 44.5 percent in truly rural constituencies.

There is no significant difference in the percentages of constituents from the differing types of districts contacting their member of Parliament or the member's office or in attending a meeting where the member spoke. There are variations, however, in the approaches taken and in the reasons for them.

According to the survey, members of Parliament from urban/rural, rural constituencies were more likely to respond in person than were

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Table 6.5 (percentages)

Q6. Some people argue that an MP when elected should represent constituents as best he or she thinks fit, while others say that constituents should be able to make an MP do what constituents want on any given issue. What is your opinion?

	Overall	Urban Urban/rural	Rural/urban Rural
Independent	38.8	37.8	37.9
Do what constituents want	46.3	47.5	43.6
Don't know	14.9	14.7	18.5
(N = 1 743)			

Table 6.6 (percentages)

Q7. Members of Parliament have to work on behalf of individual constituents, for the riding as a whole, for the region of the country they represent and at the national level. At what level do you think an MP's responsibilities are the most important?

	Overall	Urban Urban/rural	Rural/urban Rural	Quebec
Individual	8.5	8.6	8.5	11.6
Riding	32.8	34.4	34.7	21.3
Regional	24.2	21.1	23.7	32.9
National	18.7	18.5	17.1	13.5
All	10.6	10.2	9.3	9.1
(N = 1 743)				

those from totally urban electoral districts (see table 6.9).

Perhaps as a result of the higher degree of personal responses from less urban areas, constituents from these areas are more satisfied with their members' answers. Less than two out of three respondents in urban constituencies (61.7 percent) are "very satisfied" or "somewhat satisfied" with the answer they received compared with 84.4 percent in urban/rural districts and 86.6 percent in predominantly rural districts.

The survey of Canadians' attitudes toward their members of Parliament, and what they want from them, shows marked differences

Table 6.7 (percentages)

Q4. If you have ever talked with, written to, or in any other way contacted your MP or his or her office, was that by telephone, letter, in an arranged personal meeting or in some other way?

	Urban	Urban/rural	Rural/urban Rural
Telephone	51.6	34.1	43.4
Letter	35.5	37.2	32.7
Personal meeting	3.2	18.2	16.7
Social event	4.8	5.4	2.8
Other	4.8	4.7	3.9

Table 6.8 (percentages)

Q4c. Was the purpose to express an opinion about a policy or issue, to request information, to seek help with a problem or something else?

	Urban	Urban/rural	Rural/urban Rural
Express opinion	51.6	38.8	31.7
Request information	14.5	20.9	19.6
Seek help with a problem	27.4	28.9	40.2
Other	6.5	4.7	3.9

Note: Numbers reflect actual contacts.

Table 6.9 (percentages)

Q4e. Was the response from the MP personally, or from his or her office staff?

	Urban	Urban/rural	Rural/urban Rural
Member	41.7	54.8	56.6
Staff	52.1	40.4	39.9
Don't remember/Other	6.2	4.8	3.5
(N = 380)			

between residents of urban centres and more rural areas. While all groups primarily want their members to be available and to represent their views and concerns, they seem divided on what they want in the way of service. All groups overwhelmingly see their member as the representative of their constituency, not as the representative of a political party or of the nation as a whole.

Generally, residents of more rural areas appear to view their member in more of an "ombudsman" role, there to help with individual problems. Although no higher percentage from these areas contact their member, they are more likely to have personal contact. This may be because members from less populated electoral districts appear to have a lighter workload than do their urban counterparts. Given that about the same percentage of constituents from both areas contact their member in one way or another, this would result in a larger number of contacts for urban members and their offices because of the larger number of constituents they serve.

There is little, if anything, in the survey results to suggest that the sparsely populated areas require overrepresentation to be effectively serviced. In fact, it could be argued, given these results, that the urban constituents are the ones who suffer a lesser level of service from their members.

#### THE VIEW FROM THE HILL

To determine the views of members of Parliament on how they see their jobs and the delivery of services to their constituents, all members were asked to complete a questionnaire. Completed questionnaires were received from 83 of the 295 members, or 28.1 percent. Those who completed the questionnaire represent a sample consisting of a proportionate mix of representatives from urban and urban/rural ridings compared to those from rural/urban and rural ridings. Urban and urban/rural districts comprise 58.6 percent of the constituencies in the 10 provinces and 55.4 percent of members completing the questionnaire represent such districts.

More than three out of five members (62.2 percent) rate "constituency service and representation" as the most important feature of their job, with another 30.5 percent ranking it second most important. There is no difference in this perception between members from urban and rural constituencies. However, there is considerable difference between the two groups as to what feature of the job is second most important. Forty percent of urban members rate "parliamentary activities such as caucus meetings, debates and committee work" as second most important as compared to 16.2 percent of rural members. "Influence in the develop-

ment of policy" is ranked second most important by 48.6 percent of those in rural areas compared to 26.7 percent of urban members.

Members of Parliament perceive their constituency service and representation somewhat differently than their electors. Generally, members appear to put more emphasis on the "ombudsman" role of their job, with 85.2 percent saying "helping constituents to resolve individual problems" is the most important constituency service. The public ranks this only fourth in importance, at 56.8 percent, as a task of members.

While explaining government policy is rated as very important by 61.1 percent of the public, only 8.9 percent of members rate this as most important although more than one in three (35.4 percent) say it is second most important.

When asked what they considered their primary responsibility as a member of Parliament, a plurality mentioned the "ombudsman" role of helping individual constituents with problems. The difference between urban and rural members is that urban members are more concerned with such help and rural members place more emphasis on representing their constituents (see table 6.10).

Table 6.10 (percentages)

Do you feel that your primary responsibility is to help your electors in their dealings with government, to represent your constituency as a whole, to respond to issues or needs in your area with other representatives, to represent your province or to attend to issues of a national scope? Which would you place second? Which third?

	First		Second		Third	
	Urban	Rural	Urban	Rural	Urban	Rural
Helping electors	51.2	29.7	18.6	27.0	18.6	21.6
Representing your constituents	20.5	36.1	45.5	30.6	13.6	19.4
Dealing with area issues	2.2	8.1	17.8	29.7	46.7	45.9
Dealing with provincial issues	4.8	5.7	14.3	2.9	28.6	48.6
Dealing with national issues	25.0	24.3	6.8	10.8	15.9	10.8
(N = 83)						

Note: The questions presented in tables 6.10-6.13 are taken from the questionnaire given to MPs.

Given their views on their responsibilities, it is not surprising that members spend much of their working time on "constituency matters" (see table 6.11). However, despite spending so much time on constituency matters, members are likely to personally handle less than 50 percent of the mail or calls from their constituents (see table 6.12).

Members' perception of the substance of these contacts is considerably different from that of respondents in the general survey. Of electors who have contacted their member of Parliament, 51.6 percent say they did so to express an opinion and only 27.4 percent say they were seeking help with a problem. However, members say that 62.2 percent of the contacts they receive are from constituents who are seeking help, with only 31.3 percent expressing an opinion.

Members regard "getting back to their constituency" as the most time consuming of their tasks, followed by "taking on research or Committee responsibilities pertinent to legislation." "Debating and voting in the House" ranks second lowest, just ahead of devoting time to looking after party matters, whether in caucus or through to the party's organization at large.

Once back in the constituency, members find that "the most effective way to address constituents' concerns" is handling them from the constituency office (60.2 percent), although this is higher for urban

**Table 6.11** 

On the average, approximately how much of your working time as an MP is spent on constituency matters?

	0-25%	26-50%	51-75%	76-100%
Overall	23.2	41.5	26.8	8.5
Urban	26.7	44.4	26.7	2.2
Rural	18.9	37.8	27.0	16.2

**Table 6.12** 

During an average week, how much in the way of mail, calls or telegrams from the people in your constituency would you say you personally get to handle?

	0-25%	26-50%	51-75%	76-100%
Overall	43.2	21.0	21.0	14.8
Urban	42.2	17.8	20.0	20.0
Rural	44.4	25.0	22.2	8.3

Table 6.13 (percentages)

There are many factors which may influence an MP when one is making decisions. Here is a list of some of these factors. Thinking in general terms, could you please rank order these factors in terms of how important they are for you personally in making decisions as a member of Parliament?

	First	Second	Third	Fourth	Fifth	Sixth
Your own judgement and experience	72.0	17.1	7.3	2.4	_	1.2
Your constituents' opinions	25.0	32.5	18.8	13.8	6.3	3.8
Opinions of MPs of your party	2.6	26.0	28.6	10.4	19.5	13.0
Views of your local party organization	1.3	13.0	20.8	31.2	20.8	13.0
Particular individuals in your district	_	13.0	21.7	11.6	23.2	30.4
Opinions of organized groups	_	1.3	6.6	30.3	30.3	31.6

members (67.4 percent) than for rural members (51.4 percent). Rural members are more likely to travel to constituents' homes as an effective way to handle concerns (20.0 percent to 11.9 percent) or attend community functions (61.2 percent to 6.5 percent).

There is a difference between urban and rural members over what they believe is most significant for maintaining visibility and contact in the constituency. Forty percent of urban members cite personal meetings with constituents as most significant compared to 35.1 percent for rural members. Rural members put more faith in attending community gatherings, with 32.4 percent saying these are most significant compared to 20 percent of urban members. And by 13.5 percent to 7.7 percent over their urban colleagues, rural members cite media exposure or advertising as most significant.

Both urban and rural members regard responses to their own opinion surveys or householder mailings as the most reliable source of grassroots feelings in their constituency, followed by "community leaders representing groups." Rural members are more likely to rely on local public officials and party people than are urban members who put more faith in personal acquaintances.

Members of Parliament, however, are most likely to act on their own judgement and experience when making decisions rather than on the views of their constituents (see table 6.13).

There is no significant difference in these rankings between urban and rural members.

Members of Parliament are almost evenly split, overall, on agreeing or disagreeing with the statement that "with the current resources now at a[n] MP's disposal – mailing privileges, toll-free numbers, fax and constituency staffing – he or she can adequately perform those duties of constituency representation and service without coming into face to face contact with the vast majority of constituents."

Forty-seven percent of members "agree" or "tend to agree" with this statement while 50.6 percent "disagree" or "tend to disagree." There is, however, a notable divergence between rural and urban members, as shown by 56.7 percent of the former disagreeing but only 45.6 percent of the latter.

Responses from members of Parliament indicate that urban and rural members have a somewhat different view of their jobs. As was found in the survey of the general public, the relationship between rural voters and their representatives appears to be a more personal one. Rural members are more concerned about personal contact than are their urban colleagues and, on average, spend more time working on "constituency matters" – even though they receive fewer submissions.

On the other hand, rural members are less concerned about helping their constituents. They see representing them as more important than fulfilling an "ombudsman" role. This opposes the view of rural residents who are more concerned than their urban counterparts that their representative be able to assist them with problems.

There is nothing in the responses of members of Parliament to suggest that there are major differences between urban and rural members in servicing constituents. There is nothing to suggest that the differences that do exist are sufficient to justify, on service grounds, the overrepresentation of rural areas. The responses seem to suggest that urban residents would be more equitably and better served with a more equal balance between populations.

#### **SUMMARY AND CONCLUSION**

The survey data and responses from members of Parliament clearly show that "effective representation" means different things to different people. Some conclusions are obvious.

Once the voters have decided on their representative through the ballot box, they see their member as their surrogate, and not in a politically partisan light. By a narrow majority (46.3 percent to 38.8 percent), voters believe that they should determine the decisions of their member – that he or she should do what the constituents want on any given issue. This is not the view of members, who overwhelmingly believe (72 percent) that their own judgement should prevail.

Voters are more concerned, by a substantial margin, that members of Parliament reflect their views than help them with individual problems. On the other hand, members believe helping individual constituents is the most important part of their job. Voters believe that the main concern of members should be the constituency, while members think it should be the nation.

There are few differences in expectations and attitudes between rural and urban voters although those in more rural areas appear to favour a more personal linkage with their elected representative. Both rural and urban electors favour, by a slim majority, roughly equal populations between electoral districts even though they believe this would impact negatively on service from their member.

Both rural and urban electors contact their member in about the same percentages. This means more contacts from urban voters because of the greater number per constituency. Urban voters are more likely to express an opinion in their contact with members, while rural voters are more likely to ask for assistance with particular individual problems. There are several possible reasons for this: members from more rural areas are better known; members from rural areas are more likely personally known; many rural areas do not have the services available from other sources as do major cities.

A sizable minority of electors (25 percent) and about half of the members of Parliament believe that personal contact between voters and members is notably less important given modern means of communication and the resources available to members.

Given these findings, there would appear to be little justification for relating "effective representation" to the geographical size of electoral districts, at least in terms of the service delivered to constituents by their members or demanded by voters.

The data indicate that most voters want their federal members to represent the interests of the local constituency or the region, suggesting that effective representation may well be based on "community of interest." Such an approach is not necessarily dependent on geographic size. While there may be other reasons for limiting the geographic size of rural or sparsely populated ridings, and thus overrepresenting their inhabitants, service does not appear to be one of them. Representation or service problems in geographically large districts can be dealt with in other ways such as expanding the resources available to members to carry out their responsibilities.

# APPENDIX A ANALYSIS BY DEMOGRAPHICS

#### Area

Though there were some differences in responses when broken down by the urban/rural variable, there were fewer than might have been expected. Rural voters had somewhat more confidence in their MP, were more likely to have contacted the MP, tended to do so personally and were less likely to do so to express an opinion, but rather to seek help with a personal problem.

Table 6.A1 By area

Q3iv. Do you know anyone, any of your family, friends, or people at work, who has been in contact with your MP?

	Urban	Urban/ rural	Urban/ rural+	Rural/ urban+	Rural/ urban	Rural
Yes	34.5	47.9	52.7	55.4	48.2	54.3
No	62.7	49.3	46.2	41.2	47.7	54.3
Unsure	2.7	2.8	1.1	3.4	4.1	2.3
(N = 1 743)						

Note: All the figures in the tables in appendix A are percentages.

Table 6.A2 By area

Q4. Have you ever talked with, written to, or in any other way contacted your MP or his or her office about any problems?

	Urban	Urban/ rural	Urban/ rural+	Rural/ urban+	Rural/ urban	Rural
Yes	28.2	23.9	24.7	26.6	28.0	31.3
No	71.8	76.1	75.3	73.4	72.0	68.8
(N = 1 743)						

Table 6.A3 By area

Q4b. If yes, was that by telephone, letter, in an arranged personal meeting or in some other way?

	Urban	Urban/ rural	Urban/ rural+	Rural/ urban+	Rural/ urban	Rural
Telephone	51.6	33.3	35.6	48.8	44.3	36.3
Letter	35.5	38.1	35.6	31.4	26.1	43.8
Meeting	3.2	20.2	15.6	14.0	19.1	16.3
Social event	4.8	6.0	4.4	2.3	4.3	1.3
Other	4.8	2.4	8.9	2.3	6.1	2.5
Don't remember		_	_	1.2	-	_
(N = 472)						

Table 6.A4 By area

Q4c. Was the purpose to express an opinion about a policy or issue, to request information, seek help with a problem or something else?

	Urban	Urban/ rural	Urban/ rural+	Rural/ urban+	Rural/ urban	Rural
Opinion	51.6	44.0	28.9	41.2	28.7	26.3
Information	14.5	15.5	31.1	21.2	18.3	20.0
Help with problem	27.4	31.0	24.4	31.8	43.5	45.0
Other	6.5	7.1	15.6	4.7	9.6	7.5
Don't remember	GARRA	2.4	_	1.2	ename.	1.3
(N = 471)						

Note: MPs were more likely to respond directly to rural voters.

Table 6.A5 By area

Q4e. Was the response from the MP personally, or from his or her office staff?

	Urban	Urban/ rural	Urban/ rural+	Rural/ urban+	Rural/ urban	Rural
Member	41.7	50.7	62.9	50.7	58.8	59.6
Staff	52.1	44.9	31.4	42.0	40.2	36.8
Other	4.2	2.9	5.7	5.8	1.0	1.8
Don't remember	2.1	1.4	_	1.4		1.8
(N = 380)						

Note: Voters of all areas were concerned that MPs be available to constituents.

Table 6.A6 By area

Q5i. How important is it that an MP be personally available to the people in the riding?

	Urban	Urban/ rural	Urban/ rural+	Rural/ urban+	Rural/ urban	Rural
Very important	62.7	63.2	65.4	64.1	63.7	59.0
Important	31.8	29.9	28.0	28.8	30.7	35.9
Not very	4.1	5.7	5.5	4.3	4.1	5.1
Not at all	0.9	0.6	0.5	0.9	0.7	_
Don't know	0.5	0.6	0.5	1.9	0.7	_
(N = 1 743)						

Table 6.A7 By area

Q5iii. How important is it that a member of Parliament help constituents solve problems they may have with the federal government?

	Urban	Urban/ rural	Urban/ rural+	Rural/ urban+	Rural/ urban	Rural
Very important	51.8	60.7	52.2	59.4	60.6	55.5
Important	43.2	30.2	39.0	33.4	32.1	35.9
Not very	2.3	4.8	5.5	4.0	4.6	5.9
Not at all		2.0	1.6	0.9	1.2	1.6
Don't know	2.7	2.3	1.6	2.2	1.5	1.2
(N = 1 743)						

Table 6.A8 By area

Q10. Some people feel that in sparsely populated areas ridings should be limited in size even if this means there is a smaller population than in, for example, urban ridings. Others feel that all ridings should have roughly the same population base. What do you think?

	Urban	Urban/ rural	Urban/ rural+	Rural/ urban+	Rural/ urban	Rural
Population	52.3	52.4	45.6	48.6	51.6	43.0
Geography	27.7	28.5	25.8	31.3	27.0	34.8
Mixed	11.4	13.1	9.9	9.3	11.2	11.3
Other	1.8	_	1.6	0.9	1.0	2.0
Don't know	1.2	6.0	17.0	9.9	9.2	9.0
(N = 1 743)						

### 270 DRAWING THE MAP

Table 6.A9 By area

Q3iv. Do you know anyone, any of your family, friends, or people at work, who has been in contact with your MP?

	Urban	Rural
Yes	45.2	52.1
No	52.5	44.4
Unsure	2.4	3.4
(N = 1 743)		

### Table 6.A10 By area

Q4c. Was the purpose to express an opinion about a policy or issue, to request information, seek help with a problem or something else?

	Urban	Rural
Opinion	42.9	31.8
Information	18.8	19.6
Help with problem	28.3	40.4
Other	8.9	7.5
Don't remember	1.0	0.7
(N = 471)		

### Table 6.A11 By area

Q4d. Did you get any response?

	Urban	Rural
Yes	79.4	82.0
No	19.6	17.6
Don't remember	1.1	0.4
(N = 467)		

Table 6.A12 By area

Q4e. Was the response from the MP personally, or from his or her office staff?

	Urban	Rural
Member	50.7	56.6
Staff	44.1	39.9
Other	3.9	2.6
Don't remember	1.3	0.9
(N = 380)		

### Table 6.A13 By area

Q5i. How important is it that an MP be personally available to the people in the riding?

	Urban	Rural
Very important	63.6	62.6
Important	30.0	31.4
Not very	5.2	4.4
Not at all	0.7	0.6
Don't know	0.5	0.9
(N = 1 743)		

### Table 6.A14 By area

Q5v. How important is it that an MP get government projects and services that the riding needs?

	Urban	Rural
Very important	48.5	53.6
Important	41.3	37.1
Not very	6.1	5.4
Not at all	2.3	1.7
Don't know	1.9	2.2
(N = 1 743)		

### 272 Drawing the Map

### Table 6.A15 By area

Q10. Some people feel that in sparsely populated areas ridings should be limited in size even if this means there is a smaller population than in, for example, urban ridings. Others feel that all ridings should have roughly the same population base. What do you think?

	Urban	Rural
Population	50.7	48.4
Geography	27.6	30.4
Mixed	11.8	10.6
Other	0.9	1.2
Don't know	8.9	9.4
(N = 1 743)		

### **Occupation**

In general, there were few consistent patterns evident when the results were broken down by occupation. It did seem, however, that those in the "higher" occupations had more contact with their member.

Table 6.A16

By occupation

Q3i. Have you ever attended a meeting where the MP spoke?

	Yes	. No	Unsure
Professional/owner/manager	49.4	50.6	Appropriate to the state of the
Semi-professional	57.2	41.5	1.3
Skilled white collar	47.8	51.8	0.4
Unskilled white collar	32.7	66.9	0.4
Skilled blue collar	41.4	58.6	_
Unskilled blue collar	36.7	62.9	0.4
Student	35.0	65.0	destille
Housewife	35.3	64.7	*****
Retired	49.3	49.8	0.9
Unemployed	26.2	73.8	_
Refused to answer	33.3	66.7	-
Farmer/fisher	41.1	57.5	1.4
(N = 1 743)			

Note: Tables 6.A16-6.A18 add to 100 by row, whereas all others add to 100 by column.

# Table 6.A17 By occupation

Q4. Have you ever talked with, written to, or in any other way contacted your MP or his or her office about any problems?

	Yes	No
Professional/owner/manager	42.5	57.5
Semi-professional	37.1	62.9
Skilled white collar	30.3	69.7
Unskilled white collar	24.8	75.2
Skilled blue collar	25.2	74.8
Unskilled blue collar	19.5	80.5
Student	14.0	86.0
Housewife	22.4	77.6
Retired	27.9	72.1
Unemployed	28.6	71.4
Refused to answer	16.7	83.3
Farmer/fisher	38.4	61.6
(N = 1 743)		

## 274 DRAWING THE MAP

And on the question of whether an MP should be independent or beholden to his or her constituents, the "higher" groups were more likely to favour independence.

Table 6.A18
By occupation

Q6. Some people argue that an MP when elected should represent constituents as best he or she thinks fit, while others say that constituents should be able to make an MP do what constituents want on any given issue. What is your opinion?

	Independent	Do what constituents want	Other	Don't know
Professional/owner/manager	48.3	41.4	6.9	3.4
Semi-professional	50.3	37.7	7.5	4.4
Skilled white collar	37.8	46.6	10.0	5.6
Unskilled white collar	35.3	43.5	13.3	7.9
Skilled blue collar	39.6	49.5	5.4	5.4
Unskilled blue collar	32.3	47.4	10.0	10.4
Student	32.0	49.0	8.0	11.0
Housewife	31.4	48.1	7.1	13.5
Retired	41.0	44.5	5.7	8.7
Unemployed	38.1	45.2	7.1	9.5
Refused to answer	50.0	33.3	-	16.7
Farmer/fisher	35.6	47.9	9.6	6.8
(N = 1 743)				

### Language

There was less interest in politics and less contact evident among Frenchspeaking respondents.

Table 6.A19 By language

Q1. How closely do you follow po
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	English	French	Both	Other
Very closely	15.1	6.4	14.5	10.0
Fairly closely	50.3	33.6	43.4	46.7
Not very closely	23.5	40.0	28.9	6.7
Not much at all	11.1	19.7	13.2	36.7
Don't know	0.1	0.3	_	_
(N = 1 743)				

Table 6.A20 By language

Q3i. Have you ever attended a meeting where the MP spoke?

	English	French	Both	Other
Yes	45.0	29.2	42.1	23.3
No	54.7	69.5	57.9	76.7
Unsure	0.3	1.4	_	_
(N = 1 743)				

### Table 6.A21 By language

Q4. Have you ever talked with, written to, or in any other way contacted your MP or his or her office about any problems?

	English	French	Both	Other
Yes	29.5	18.3	19.7	23.3
No	70.5	81.7	80.3	76.7
(N = 1 743)				

There were differences in perception of the roles of MPs, and French-speakers considered that of the MP as a regional spokesperson to be important.

### Table 6.A22 By language

Q7. Members of Parliament have to work on behalf of individual constituents, for the riding as a whole, for the region of the country they represent and at the national level. At what level do you think an MP's responsibilities are the most important?

	English	French	Both	Other
Individual	7.5	11.2	15.8	10.0
Riding	37.9	22.4	22.4	36.7
Regional	19.6	35.3	28.9	16.7
National	19.3	11.5	15.8	10.0
All	9.4	10.8	11.8	6.7
Other	1.0	1.7	_	3.3
Don't know	5.3	7.1	5.3	16.7
(N = 1 743)				

#### Income

The major source of variance when the results were broken down was found in the questions dealing with contact with the MP.

Table 6.A23 By income

Q3i. Have you ever attended a meeting where the MP spoke?

	Above \$40 000	Below \$40 000	Refused to answer	Don't know
Yes	47.2	37.5	50.8	26.2
No	52.5	61.9	49.2	73.8
Unsure	0.3	0.7	-	_
(N = 1 743)				

Table 6.A24 By income

Q3iv. Do you know anyone, any of your family, friends, or people at work, who has been in contact with your MP?

	Above \$40 000	Below \$40 000	Refused to answer	Don't know
Yes	54.6	44.5	62.3	31.0
No	43.2	51.7	37.7	66.7
Unsure	2.3	3.8	-	2.4
(N = 1 743)				

### Table 6.A25 By income

Q4. Have you ever talked with, written to, or in any other way contacted your MP or his or her office about any problems?

	Above \$40 000	Below \$40 000	Refused to answer	Don't know
Yes	31.2	23.7	36.1	11.9
No	68.8	76.3	63.9	88.1
(N = 1 743)				

### **Know Name of MP**

Among those who could not name their MP a substantial number had read about the MP in a paper or magazine and some had even been in contact with the MP.

Table 6.A26
By "know name of MP"

Q3ii. Have you read about your MP either in a newspaper or a magazine?

	Yes, know MP	No, don't know
Yes	92.7	82.8
No	6.9	16.3
Unsure	0.4	0.9
(N = 1 743)		

## 278 DRAWING THE MAP

Table 6.A27
By "know name of MP"

Q3iv. Do you know anyone, any of your family, friends, or people at work, who has been in contact with your MP?

	Yes, know MP	No, don't know
Yes	55.9	44.0
No	41.5	52.7
Unsure	2.6	3.3
(N = 1 743)		

## Table 6.A28 By "know name of MP"

Q4. Have you ever talked with, written to, or in any other way contacted your MP or his or her office about any problems?

	Yes, know MP	No, don't know
Yes	31.5	23.8
No	68.5	76.2
(N = 1 743)		

#### Education

Higher-educated groups were least likely to favour population as the base for riding size, though a plurality still favoured that option.

Table 6.A29
By education

Q10. Some people feel that in sparsely populated areas ridings should be limited in size even if this means there is a smaller population than in, for example, urban ridings. Others feel that all ridings should have roughly the same population base. What do you think?

	Population	Geography	Mixed	Other	Don't know
Completed elementary school	45.7	20.7	12.1	-	21.4
Some or all high school	50.9	28.7	9.3	1.2	10.0
Technical or business school	53.8	29.5	9.9	1.0	5.8
Some university	51.5	31.9	12.3	400,000	4.3
Completed university	42.3	34.3	15.0	1.9	6.6
Graduate study	41.1	30.0	18.9	2.2	7.8
Refused to answer	20.0	20.0	20.0	_	40.0
(N = 1 743)					

Note: Percentages add to 100 by rows.

### Region

There are regional patterns evident when political interest and contact with an MP were considered.

Table 6.A30 By region

Q1. How closely do you follow politics?						
	Atlantic	Quebec	Ontario	Prairies	B.C.	
Very closely	13.6	8.5	16.9	12.6	15.5	
Fairly closely	45.8	36.1	53.4	51.6	47.4	
Not very closely	27.1	35.4	18.3	24.7	26.4	
Not much at all	13.6	19.7	11.4	10.8	10.6	
Don't know	-	0.3	_	0.3	_	
(N = 1 743)						

Table 6.A31 By region

Q3iv. Do you know anyone, any of your family, friends, or people at work, who has been in contact with your MP?

	Atlantic	Quebec	Ontario	Prairies	B.C.
Yes	24.6	16.3	36.6	27.4	29.6
No	75.4	83.7	63.4	72.4	70.4
(N = 1 743)					

Residents of Quebec are less concerned than others that the MPs be personally available and much more concerned that he or she be a regional spokesperson.

Table 6.A32 By region

Q5i. How important is it that an MP be personally available to the people in the riding?

·	· · · · · · · · · · · · · · · · · · ·				
	Atlantic	Quebec	Ontario	Prairies	B.C.
Very important	66.9	51.4	67.1	65.3	63.2
Important	28.0	36.7	28.6	27.7	33.9
Not very	4.2	8.2	3.4	6.2	2.0
Not at all	_	2.2	0.6	0.3	0.3
Don't know	0.8	1.6	0.3	0.5	0.6
(N = 1 743)					

### Table 6.A33 By region

Q7. Members of Parliament have to work on behalf of individual constituents, for the riding as a whole, for the region of the country they represent and at the national level. At what level do you think an MP's responsibilities are the most important?

	Atlantic	Quebec	Ontario	Prairies	B.C.
Individual	9.6	11.6	6.0	9.7	6.0
Riding	31.6	21.3	41.7	37.1	39.9
Regional	23.2	32.9	17.1	18.0	23.0
National	19.5	13.5	18.6	15.6	21.0
All	7.6	11.6	11.4	11.0	6.9
Other	0.6	1.6	1.1	1.6	0.6
Don't know	7.9	7.5	4.0	7.0	2.6
(N = 1 743)					

Surprisingly, those who are most in favour of population as the determinant of riding size are from the Prairies.

Table 6.A34 By region

Q10. Some people feel that in sparsely populated areas ridings should be limited in size even if this means there is a smaller population than in, for example, urban ridings. Others feel that all ridings should have roughly the same population base. What do you think?

	Atlantic	Quebec	Ontario	Prairies	B.C.
Population	50.8	45.8	48.3	53.2	48.3
Geography	28.2	29.2	30.3	26.1	32.5
Mixed	11.6	10.3	11.4	11.3	10.9
Other	1.1	0.3	1.7	1.3	0.9
Don't know	8.2	14.4	8.3	8.1	7.5
(N = 1 743)					

### Age

Although younger respondents were less interested in politics, they did know people who had contact with their MP. On the other hand, their own contact was low.

Table 6.A35 By age

Q1. How closely	doy	ou folloy	v politics?
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						Refused	
	18-24	25-34	35-44	45-54	55-64	65+	to answer
Very closely	8.6	9.1	13.0	15.2	18.2	21.3	_
Fairly closely	35.2	43.9	46.1	51.8	55.8	53.9	****
Not very closely	30.5	33.4	26.5	26.1	17.1	16.1	_
Not much at all	25.2	13.6	14.4	7.0	8.8	8.3	100.0
Don't know	0.5	_	_	-	_	0.4	_
(N = 1 743)							

Table 6.A36 By age

Q3iv. Do you know anyone, any of your family, friends, or people at work, who has been in contact with your MP?

	18-24	25-34	35-44	45-54	55-64	65+	Refused to answer
Yes	53.3	50.8	49.2	56.4	45.9	36.5	-
No	43.3	47.3	47.4	42.4	48.6	59.6	100.0
Unsure	3.3	1.9	3.4	1.2	5.5	3.9	
(N = 1 743)							

#### Table 6.A37 By age

Q4. Have you ever talked with, written to, or in any other way contacted your MP or his or her office about any problems?

	18-24	25-34	35-44	45-54	55-64	65+	Refused to answer
Yes	14.3	24.8	30.1	35.8	28.2	26.5	
No	85.7	75.2	69.9	64.2	71.8	73.5	100.0
(N = 1 743)							

# APPENDIX B METHODOLOGY

The study was conducted by the Carleton University Survey Centre for the Royal Commission on Electoral Reform and Party Financing. Interviewing of the 1 743 respondents commenced 23 May 1991 and was finished 17 June.

### Sample

The sample was stratified by region to ensure numbers for analysis. A minimum of 300 people from each region was required and the actual numbers interviewed were:

Atlantic	354
Quebec	319
Ontario	350
Prairies	372
BC	348
Total	1 743

Since the urban/rural was crucial for the analysis, a further stratification was employed. The strata were the six types of ridings designated by Elections Canada for the purpose of extra reimbursements for MPs. The numbers interviewed for each stratum were:

Urban	220
Urban/rural	351
Urban/rural +	182
Rural/urban +	323
Rural/urban	411
Rural	256
Total	1 743

Two constituencies of each type were randomly chosen from each province. Since in some provinces some types of constituency simply did not exist, the numbers in each category could not be even, but there were sufficient numbers for analysis. Within these provincial strata the sample was chosen from listed numbers. Unlisted and new numbers were included by changing the last digit of each telephone number.

#### Questionnaire

Interviewing was conducted from the School of Journalism at Carleton University. The interviewers were experienced, bilingual and worked under constant supervision. Prior to the first night of interviewing, an information session was held to familiarize the interviewers with the questionnaire, to provide instruction and to answer any questions. After the first night of interviewing, call-backs were the first calls made. Seven call-backs were normal.

The questionnaire was designed by representatives of the Royal Commission in conjunction with the Carleton University Survey Centre. It was pre-tested using 100 interviews in English and 50 interviews in French.

### **Response and Refusal**

Of all the calls made, 19.8 percent could not be contacted, 3.7 percent were business numbers, 4.4 percent were not in service, 21.2 percent refused to be interviewed and 49.1 percent completed the questionnaires.

### Weighting

Since the sample was stratified by region and constituency type, weighting was employed to ensure that the sample reflected the true proportions of the population. The raw data were weighted for age, gender, constituency type and region. In all, 720 weighting equations were used.

### **Sample Size and Error**

A sample of this size is deemed accurate within 2.3 percentage points 19 times out of 20. For any subgroup or breakdowns the error margin is larger. The concept of standard error is based on a sampling distribution. It is merely a probability estimate and does not mean that any result is as likely to differ 2.3 percentage points from population mean as, say, 1.4 percentage points. Nor does standard error measure other forms of error, such as mistakes in interviewing, coding, keypunching or computation.

## APPENDIX C WEIGHTED FREQUENCIES

### **Weighted Frequencies – Percentages**

Q1. We would like to know how much attention you pay to politics generally. Would you say that you follow politics very closely, fairly closely, not very closely or not much at all?

Very closely	14.3
Fairly closely	47.8
Not very closely	23.7
Not much at all	14.2
Don't know	0.0
(N=1743)	

Q2. Thinking about some people and organizations in Canadian politics, would you tell me how much confidence you have in each one: a great deal, some, not very much or none at all?

	Great deal	Some	Not very much	None	Don't know
The Supreme Court	32.0	41.2	17.0	4.5	5.3
Newspapers in general	11.2	48.9	30.7	8.0	1.2
Your MP	13.7	37.7	27.3	12.7	8.6
The federal civil service	8.4	40.9	33.2	10.3	7.2
Political parties in general	3.4	32.0	43.8	18.9	1.9
The House of Commons	5.6	41.9	32.0	15.4	5.1
The Senate	4.6	22.2	28.4	36.6	8.3
Trade unions	11.0	39.4	24.2	15.4	10.0
(N=1743)					

Q3. Thinking specifically of members of Parliament, have you come in contact with or learned anything about your MP, or any MP you have had in the past, in any of the following ways?

i) Have you ever attended a meeting where the MP spoke?

1 Yes	2 No	3 Unsure
41.2	58.2	0.5
(N=1743)		

ii)	Have you read	d about your MI	either in a newspaper or a ma	gazine?
	85.3	13.8	0.9	
	(N= 1 743)			
				2
iii)	•	·	MP either on the radio or on TV	•
	81.8	17.2	0.9	
	(N=1 743)			
iv)			of your family, friends, or pect with your MP?	eople at
	42.4	54.4	3.2	
	(N=1743)			
v)		uring an election ets or surveys f	n campaign, have you receive rom your MP?	d any
	78.8	19.2	2.0	
	(N= 1 743)			
			ten to, or in any other way co s or her office about any probl	
	Yes		27.6	
	No		72.4	
	(N=	1 743)		
If ye	es			
	s that by teleph er way?	one, letter, in ar	arranged personal meeting or	in some
	Telepho	one	47.2	
	Letter		27.9	
	Meetin	g	12.9	
	Social e	event	5.9	
	Other		6.1	
	Don't r	emember	0.1	

(N=472)

Q4.

Was the purpose to express an opinion about a policy or issue, to request information, seek help with a problem or something else?

Opinion	42.0
Information	15.0
Help with problem	33.1
Other	8.8
Don't remember	1.0
(N= 471)	

Did you get any response?

Yes	82.7
No	16.7
Don't remember	0.5
(N=467)	

Was this response from the member of Parliament personally, or from his or her office staff?

Member	48.9
Staff	45.8
Other	3.7
Don't remember	1.6
(N=380)	

What form did the response take? Was it a letter, a phone call, a meeting or something else?

Letter	46.9
Telephone	27.7
Meeting	16.9
Other	7.9
Don't remember	0.6
(N=377)	

How satisfied were you with the time it took to get a response? Were you very satisfied, somewhat satisfied, not very satisfied or not at all satisfied?

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Very satisfied	48.6
Somewhat satisfied	36.6
Not very	11.5
Not at all	2.8
Don't know	0.6
(N=374)	

How satisfied were you with the answer you received? Were you very satisfied, somewhat satisfied, not very satisfied or not at all satisfied?

Very satisfied	33.5
Somewhat satisfied	34.9
Not very	18.6
Not at all	11.3
Don't know	1.6
(N=374)	

Q5. I am going to read to you a list of tasks that a member of Parliament may have to perform. Would you tell me how important you consider them to be. Would you say they are very important, somewhat important, not very important or not at all important? First of all:

	Very important	Important	Not very important	Not at all important	Don't know
i)	Being perso	nally available to	the people in t	he riding.	
	61.4	32.0	4.7	1.3	0.6
ii)	Taking part and so forth	in parliamentary	debates, ques	stion period, co	ommittees
	51.9	40.2	4.9	1.5	1.5
iii)	Helping con government	stituents solve pr	oblems they m	ay have with tl	ne federal

iv) Explaining to the people what kind of things the federal government is thinking about doing.

37.5

56.8

thinking at	out doing.			
61.1	31.0	5.0	1.2	1.7

3.2

1.0

1.5

7	v) Getting gove	rnment projects	and services th	e riding needs.	
	50.0	40.8	5.6	2.1	1.5
v	i) Watching ove in his or her o	r how government	nt policy is carri	ied out by the c	ivil service
	47.1	40.1	6.9	1.5	4.5
vi	i) Representing	the views of cor	stituents in Pa	rliament.	
	62.9	29.7	4.2	1.2	2.0
vii	i) Influencing g	overnment polic	y.		
	47.4	41.4	5.7	2.1	3.4
i	the federal go	governments, as	ssociations or co	ompanies in de	ealing with
	38.8 (N= 1 743)	45.4	8.4	2.4	5.1
	able to make a given issue. W	me thinks fit, while member of Parlia hat is your opini	ament do what	constituents w	
		pendent		38.8	
		vhat constituents	swant	46.3	
	Othe			8.2	
		't know N= 1 743)		6.7	
		·	1 1 1 16	<i>(</i> 1 · · 1 · 1 · 1 · . 1 ·	1°1
7.	for the riding a	rliament have to versions a whole, for the level. At what level portant?	region of the co	ountry they rep	resent and
	Indi	vidual		8.5	
	Ridi	ng		32.8	
	Reg	onal		24.2	
	Nati	onal		18.7	
	All			10.6	
	Othe	er		1.4	

3.9

Don't know

(N=1743)

Q8. Thinking about your own member of Parliament for a moment, what would you say is the most important service he or she should provide to you as an individual voter?

Providing information 20.5 Upholding democratic process 0.9 Nothing 1.9 Fulfilling election promises 1.9
Nothing 1.9
2.10111115
Fulfilling election promises 1.9
Honesty/accountability 4.0
Providing jobs 5.0
Don't know 21.4
National unity 2.2
Implement party policy 2.3
Economic/taxes/spending 3.8
Other 4.2
(N= 1 743)

Q9. Given new communication technologies such as faxing and teleconferencing do you feel that any of the following are true:

		Yes	No	Don't know
i)	There is less reason for MPs to spend time in the constituency.	22.3	69.7	8.0
ii)	Ridings can be made geographically larger.	36.9	53.0	10.2
iii)	You are more likely to communicate directly with your MP.	53.4	40.7	5.9
	(N= 1 743)			

Q10. Some people feel that in sparsely populated areas ridings should be limited in size even if this means there is a smaller population than in, for example, urban ridings. Others feel that all ridings should have roughly the same population base. What do you think?

Population	51.2
Geography	28.1
Mixed	12.0

Other	0.8
Don't know	7.9
(N= 1 743)	

Q11. Do you feel that if ridings were smaller in area or population MPs could provide constituents with a better overall service?

	Yes	56.8
	No	31.3
	Other	3.9
	Don't know	8.0
	(N= 1 743)	
Why do	you say that?	
	MP can serve fewer people better	50.3
	Size irrelevant	18.5
	Don't do a good job	3.8
	Government too large now	3.7
	New communication technology	
	can help MPs	1.2
	More MPs = More costs	1.1
	Larger area = More support	0.9
	Don't know	20.6

(N=1601)

Q12. If ridings were made larger in area or population, do you feel services would suffer?

Yes	61.6
No	24.5
Other	4.9
Don't know	9.0
(N=1.743)	

Why do you say that?

Depends on MP	8.2
More population = Poorer service	56.4
Larger area = Larger tax base	1.0
Costs increase	0.8

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Size irrelevant	11.5
People will seek out MP if interested	0.6
Government should be small	1.1
Don't know	20.4
(N=1557)	

Q13. On the whole, what kind of a job do you feel that your member of Parliament is doing in the following areas: a very good job, a good job, a fair job, a poor job or a very poor job?

	Very good	Good	Fair	Poor	Very poor	Don't know
Working on behalf of the constituency as a whole	13.0	31.1	33.6	8.5	2.8	11.1
Explaining government policies	10.3	26.2	30.0	14.8	6.0	12.7
Personal assistance to constituents	9.6	22.6	24.8	10.4	6.1	26.5
Representing regional interests	13.7	32.8	26.6	8.7	4.5	13.6
Telling you what he/she is doing on your behalf	15.1	29.1	24.7	11.3	8.9	11.0
Representing the constituency at the national level	10.3	28.1	26.3	9.9	5.6	19.8
(N= 1 743)						

Q14. What age group are you in?

	• • •	
	18–24	15.2
	25–34	25.9
	35–44	20.6
Probe	45–54	13.4
	55–64	11.1
	65+	13.8
	Refused to say	0.1
	(N=1743)	

### 2 9 3

### IN THE PUBLIC SERVICE

Q15.	What language do you normally use at home?	
	English	72.4
	French	20.6
	Both	4.2
	Other	2.9
	(N= 1 743)	
Q16.	How far did you go in school?	
	Completed grade school or less	7.1
	Some high or completed	
	high school	38.6
	Technical or business school – community college	
	after high school	18.0
	Some university	11.5
	Completed university	16.2
	Graduate study	8.1
	Refused to say	0.5
	(N= 1 743)	
Q17.	What is your usual occupation?	
	Professional/owner/manager	5.3
	Semi-professional	10.7
	Skilled WC	16.4
	Unskilled WC	14.1
	Skilled BC	6.0
	Unskilled BC	14.3
	Student	6.3
	Housewife	7.1
	Retired	13.9
	Unemployed	2.8
	Refused to say	0.7
	Farmer/fishing/logging	2.5
	(N= 1 743)	

# DRAWING THE MAP

### Q18. Is your total household income before taxes above or below \$40 000?

Above \$40 000	42.7
Below \$40 000	50.6
Refused to say	4.0
Don't know	2.7
(N=1.743)	

If above		If below	
Well, would that be:		Well, would that be:	
\$40–50	41.0	Below \$15	21.0
\$50–60	23.0	\$15–25	27.0
Above \$60	35.0	\$25–40	47.0
Refused to say	3.0	Refused to say	5.0
Don't know	1.0	Don't know	2.0
(N=746)		(N = 894)	

### Q19. Do you happen to know the name of your federal MP?

Yes	34.5
No	65.5
(N=1743)	

Area:

Urban	43.0
Urban/Rural	21.6
Urban/Rural+	2.3
Rural/Urban+	9.5
Rural/Urban	20.1
Rural	3.5

#### Province:

Newfoundland	2.9
Prince Edward Island	0.7
Nova Scotia	3.5
New Brunswick	2.9

Quebec	25.6
Ontario	36.2
Manitoba	4.3
Saskatchewan	4.3
Alberta	7.8
British Columbia	11.8

Sex:

Male	49.4
Female	50.6

## APPENDIX D QUESTIONNAIRE

Hi, I'm \_\_\_\_\_\_ from Carleton University in Ottawa. We're doing a study on what services people feel their MPs should provide and what you think about some aspects of our electoral system. Your telephone number was chosen at random to be part of the study. We'd like your help, it will only take a few minutes and your answers will be confidential.

For this study we can only choose one person from each household. May I speak to the person in your household, 18 years or older, whose birthday comes soonest after today.

 $If new \ respondent-repeat \ introduction.$ 

#### First of all:

Q1. We would like to know how much attention you pay to politics generally. Would you say that you follow politics very closely, fairly closely, not very closely or not much at all?

Very closely	1
Fairly closely	2
Not very closely	3
Not much at all	4
Don't know	9

Q2. Thinking about some people and organizations in Canadian politics, would you tell me how much confidence you have in each one: a great deal, some, not very much or none at all?

eal, some, not very much or none at all?					
	Great deal	Some	Not very much	None	Don't know
(Rotate)					
The Supreme Court	О	o	o	0	0
Newspapers in general	0	0	0	0	
Your MP	ø				0
The federal civil service	o	o	o	σ	o
Political parties in general	o	o	0	o	0
The House of Commons	0	o	o	О	o
The Senate	o		0		
Trade unions		0	O	0	0
Thinking specifically with or learned any past, in any of the fo	thing abo	ut your M			
i) Have you ever	attended	a meeting	g where the l	MP spoke?	
1 Yes	2 No		3 Unsure		
ii) Have you read	about you	ır MP eithe	er in a newsp	aper or a 1	magazine?
1 Yes	2 No		3 Unsure		
iii) Have you hear	d about y	our MP eit	her on the ra	adio or on	TV?
1 Yes	2 No		3 Unsure		
iv) Do you know anyone, any of your family, friends, or people at work, who has been in contact with your MP?					
1 Yes	2 No		3 Unsure		
v) Apart from du	ıring an e	election ca	ampaign, ha	ve you red	ceived any

v) Apart from during an election campaign, have you received any mail, pamphlets or surveys from your MP?

1 Yes

2 No

3 Unsure

Q4.	Have you ever talked with, written to, or in any other way contacted
	your member of Parliament or his or her office about any problems?

Yes	1	
No	2	Go to Q5

If yes

Was that by telephone, letter, in an arranged personal meeting or in some other way?

Telephone	1
Letter	2
Meeting	3
Social event	4
Other	8
Don't remember	9

Was the purpose to express an opinion about a policy or issue, to request information, seek help with a problem or something else?

Opinion	1	
Information	2	
Help with problem	3	
Other	4	
Don't remember	9	Go to Q5

Did you get any response?

Yes	1	
No	2	Go to Q5
Don't remember	9	Go to Q5

Was this response from the member of Parliament personally, or from his or her office staff?

Member	1	
Staff	2	
Other	8	
Don't remember	9	Go to O5

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What form did the response take? Was it a letter, a phone call, a meeting or something else?

Letter	1	
Telephone	2	
Meeting	3	
Other	8	
Don't remember	9	Go to Q5

How satisfied were you with the time it took to get a response? Were you very satisfied, somewhat satisfied, not very satisfied or not at all satisfied?

Very satisfied	1
Somewhat satisfied	2
Not very	3
Not at all	4
Don't know	9

How satisfied were you with the answer you received? Were you very satisfied, somewhat satisfied, not very satisfied or not at all satisfied?

Very satisfied	1
Somewhat satisfied	2
Not very	3
Not at all	4
Don't know	9

Q5. I am going to read to you a list of tasks that a member of Parliament may have to perform. Would you tell me how important you consider them to be. Would you say they are very important, somewhat important, not very important or not at all important? First of all:

Very important		Important	Not very important	Not at all important	Don't know
i)	Being personally available to the people in the riding.				
	1	2	3	4	5
ii)	ii) Taking part in parliamentary debates, question period, committees and so forth.				

1 2 3 4 5

	111)	federal govern	•	Toblems mey	may mave with	uie
		1	2	3	4	5
	iv)		the people wh		ngs the federal	govern-
		1	2	3	4	5
	v)	Getting gover	nment projects	and services t	he riding needs	S.
		1	2	3	4	5
	vi)		r how governn or her constitue		arried out by th	ne civil
		1	2	3	4	5
	vii)	Representing	the views of co	nstituents in P	arliament.	
		1	2	3	4	5
	viii)	Influencing go	overnment poli	cy.		
		1	2	3	4	5
	ix)		governments, a		companies in o	dealing
		1	2	3	4	5
Q6.	as b able	est he or she th	inks fit, while on the order of Parliam	others say that ent do what co	d represent cons constituents sh onstituents wan	ould be
		Independer	nt		1	
		Do what co	nstituents wan	nt	2	
		Other			3	
		Don't know	7		9	
O7.	Mer	nbers of Parlian	nent have to wo	ork on behalf of	individual cons	tituents,

for the riding as a whole, for the region of the country they represent and at the national level. At what level do you think an MP's responsi-

bilities are the most important?

Individual	1
Riding	2
Regional	3
National	4
All	5
Other	6
Don't know	9

Q8. Thinking about your own member of Parliament for a moment, what would you say is the most important service he or she should provide to you as an individual voter?

Q9. Given new communication technologies such as faxing and teleconferencing do you feel that any of the following are true:

		Yes	No	Don't know
i)	There is less reason for MPs to spend time in the constituency.		o	o
ii)	Ridings can be made geographically larger.		o	0
iii)	You are more likely to communicate directly with your MP.	o	o	0

Q10. Some people feel that in sparsely populated areas ridings should be limited in size even if this means there is a smaller population than in, for example, urban ridings. Others feel that all ridings should have roughly the same population base. What do you think?

Population	1
Geography	2
Mixed	3
Other	4
Don't know	9

Q11. Do you feel that if ridings were smaller in area or population MPs could provide constituents with a better overall service?

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Yes	1
No	2
Other	3
Don't know	9

Why do you say that?

Q12. If ridings were made larger in area or population, do you feel services would suffer?

Yes	1
No	2
Other	3
Don't know	9

Why do you say that?

Q13. On the whole, what kind of a job do you feel that your member of Parliament is doing in the following areas: a very good job, a good job, a fair job, a poor job or a very poor job?

	Very good	Good	Fair	Poor	Very poor	Don't know
Working on behalf of the constituency as a whole	1	2	3	4	5	9
Explaining government policies	1	2	3	4	5	9
Personal assistance to constituents	1	2	3	4	5	9
Representing regional interests	1	2	3	4	5	9
Telling you what he/she is doing on your behalf	1	2	3	4	5	9

# 302 DRAWING THE MAP

		ting the tuency at the al level	1	2	3	4	5	9
Q14.	What age	group are you in	?					
		18–24				1		
		25–34				2		
		35–44				3		
	Probe	45–54				4		
		55–64				5		
		65+				6		
		Refused to say				7		
Q15.	What lan	guage do you nor	mally u	se at ho	me?			
		English				1		
		French				2		
		Both				3		
		Other				4		
Q16.	How far	did you go in sch	ool?					
		Completed grad	de schoo	ol or less	5	1		
		Some high or co	omplete	d		2		
	Probe	Technical or but						
		high school				3		
		Some university				4		
		Completed univ				5		
		Graduate study	,			6		
		Refused to say				7		

Q17. What is your usual occupation?

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# Q18. Is your total household income before taxes above or below \$40 000?

Above \$40 000	1
Below \$40 000	2
Refused to say	3
Don't know	9

If above		If below		
Well, would that be:		Well, would that be:		
\$40–50 000	1	Below \$15 000	1	
\$50-60 000	2	\$15–25 000	2	
Above \$60 000	3	\$25-40 000	3	
Refused to say	8	Refused to say	8	
Don't know	9	Don't know	9	

# Q19. Do you happen to know the name of your federal MP?

No 9

Thank you very much for your cooperation.

#### Area:

Urban	1
Urban/Rural	2
Urban/Rural+	3
Rural/Urban+	4
Rural/Urban	5
Rural	6

#### Province:

Newfoundland	1
Prince Edward Island	2
Nova Scotia	3
New Brunswick	4
Quebec	5
Ontario	6

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Manitoba	7
Saskatchewan	8
Alberta	9
British Columbia	10
Male	1
Female	2

#### **ABBREVIATIONS**

am.	amended
B.C.S.C.	Supreme Court of British Columbia
C.	chapter
C.A.	Court of Appeal
D.L.R. (4th)	Dominion Law Reports, Fourth Series
R.S.C.	Revised Statutes of Canada
S.C.C.	Supreme Court of Canada
Sched.	Schedule
s(s).	section(s)
Supp.	Supplement
W.W.R.	Western Weekly Reports

Sex:

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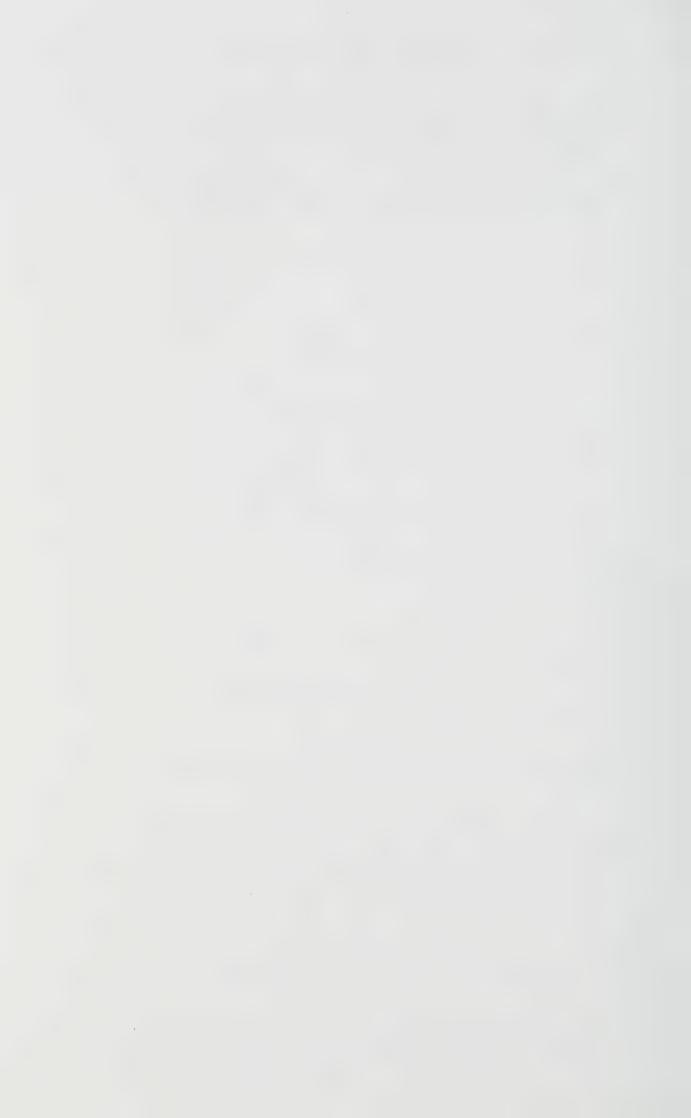
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# ENHANCING ABORIGINAL REPRESENTATION WITHIN THE EXISTING SYSTEM OF REDISTRICTING



#### **David Small**

ABORIGINAL GROUPS HAVE argued that the failure of electoral district design in Canada to provide effective representation has led to their exclusion from the political process. Status and non-status Indians, Métis and Inuit claim that they are effectively disenfranchised from the process since our geographically defined system of political representation does not enable them to speak with a collective voice to elect representatives of their choice.

Only in the two electoral districts of the Northwest Territories and the northerly Manitoba constituency of Churchill do Aboriginals constitute majority populations. Aboriginal groups have argued before the Commission that they should be entitled to a number of representatives equivalent to their percentage of the Canadian population, about 3.6 percent.

Canadian political representation has largely rejected the notion of special representation for minority groups. However, the existing system of drawing electoral district boundaries is more than simply finding lines that will enclose constituencies of equal populations. By statute, independent boundaries commissions for each province must draw those lines of comparable populations while considering "community of interest, community of identity and manageable geographic size."

The purpose of this study is to demonstrate that there are opportunities for enhanced Aboriginal influence and representation within the existing system of electoral district design. It argues that by fully

recognizing Aboriginal "communities of interest" in the application of the "community of interest" criterion found in the *Electoral Boundaries Readjustment Act*, it is possible to draw boundaries creating electoral districts in which the Aboriginal population would be sufficient to wield enough electoral strength to influence or even determine election outcomes, even to the point of electing "one of their own" to the House of Commons.

The premise is that Aboriginal electoral participation and influence can be enhanced short of creating Aboriginal majority electoral districts.

The study begins with an examination of the *Electoral Boundaries Readjustment Act* and its prescribed redistricting criteria, that is, community of interest and comparability of population among electoral districts (Canada, *Electoral Boundaries Readjustment Act*, s. 15(2)(*b*), s. 15(1)(*a*)). Also discussed is the role of citizen participation in realizing "community of interest" through the public hearings process. This section also reviews the American model of "affirmative gerrymandering" as a means of guaranteeing the electoral representation of minority groups and considers its potential for application to Canadian electoral district design.

The body of the study discusses the electoral boundaries which could be altered to create districts in which the Aboriginal population would be sufficient, potentially, to determine the electoral outcome. In identifying said boundaries, particular attention is accorded those areas with high or comparatively high concentrations of Aboriginal residents, as demonstrated by the Aboriginal population and location data (see appendix). Where possible, the proposed electoral districts follow in close proximity the boundaries of the Canada Indian Treaty Areas.

Detailed descriptions of each proposed electoral district with a significant Aboriginal population are presented in a province-by-province format. Included in the descriptions are the total population, the variation from the provincial electoral quotient within ±15 percent, the total Aboriginal population, the Aboriginal percentage of the total population, the technical descriptions, and the justification and rationale for the proposed changes. Similar descriptions are presented for neighbouring electoral districts which must also undergo boundary adjustments. Accompanying maps (figures 7.1–7.6) show the proposed revisions. The conclusion includes a summary of the study's findings and consideration of the potential implications for Aboriginal electoral influence and representation resulting from the proposed redistricting.

#### CANADIAN REDISTRICTING AND AFFIRMATIVE GERRYMANDERING

The Electoral Boundaries Readjustment Act requires that immediately following the completion of the national census every 10 years, a politically independent electoral boundaries commission be established for each province to determine the boundaries of the electoral districts within that province (Canada, Electoral Boundaries Readjustment Act, s. 3(1)). An 11th electoral boundaries commission is established for the Northwest Territories to draw the boundaries of its two electoral districts. Boundaries commissions are each composed of three members who are residents of the province, including a member of the provincial Superior or Supreme Court, selected by the chief justice of the province, who acts as chairperson, and two additional members, selected by the Speaker of the House of Commons. Through the establishment of individual commissions for each province and the appointment of commissioners who appreciate and understand their particular province's unique characteristics and concerns, the process is designed to promote sensitivity to the principle of community of interest.

Under the terms of the statute, boundaries commissions must design electoral districts in their provinces that are comparable to one another in population and correspond "as closely as reasonably possible" to provincial electoral quotients (ibid., s. 15(1)(b)). The provincial electoral quotient, or average electoral district population, is determined by dividing the province's total population by the number of seats allocated in the most recent distribution (ibid., s. 14(1)). The population criterion is based on the "representation by population" principle, which requires that not only must there be a universal franchise with each elector having only one vote, but that electoral districts from which representatives are elected must be comparable in population so that the value of each citizen's vote is roughly equal.

Adherence to the principle of representation by population has long been acknowledged in our political tradition. The first allocation of electoral districts to the four founding provinces in the *British North America Act* enshrined the principle in the Constitution. It was affirmed by statute in the 1960s with the introduction of the *Electoral Boundaries Readjustment Act*. And the Charter of the early 1980s guarantees every Canadian citizen the right to vote, a right the courts have held to mean a relatively equal value of each person's vote.

Within the Canadian experience, however, the House of Commons has come to have the dual role of representing regional or community interests as well as strict representation by population because of the failure of the Senate to fulfil its original mandate of representing regions. Over the years, constitutional or statutory safeguards have developed

to guarantee meaningful representation from provincial and territorial communities beyond that warranted by their population, particularly those whose share of the national population is declining.

This notion of representation is logically extended to the drawing of electoral boundaries within provinces in order to represent communities of interest or provide effective representation for "sparsely populated, rural or northern regions." These criteria are included in the *Electoral Boundaries Readjustment Act* (ibid., s. 15(2)(a), s. 15(2)(b)).

In Canada, as in other democratic societies, an elected official must represent all of the constituents of an electoral district, not just those who voted for him or her. Since a member of Parliament seeks to represent the collective interests of his or her constituents, it is logical that electoral districts be designed so that they encompass those communities of interest located in the general regions to be represented. In this way, the representation of interests is advanced, particularly in areas where territorial communities possess clearly identifiable collective interests.

The community-of-interest criterion protects the efficacy of the vote by avoiding the unnecessary division of a territorially defined group sharing common values, interests and concerns, thereby enhancing the ability of individuals within the group to contribute to the political agenda and influence the outcome of an election (Stewart 1991). If individuals perceive that their votes may influence the outcome of an election, they are more likely to participate in the political process. In this way, it is possible for a community of interest to be mobilized to resolve common problems and pursue agreed upon goals through collective political action.

If a community of interest is fragmented and dispersed among several electoral districts, however, the group's numbers may no longer be sufficient in any particular district to constitute a significant voting bloc. The group's voting strength becomes diluted, and the likelihood of influencing the outcome of the election is lessened. Consequently, the sense that one's vote is "meaningless" and "does not count" diminishes the individual's incentive to participate in the electoral process, thus contributing to voter apathy and further reducing the group's political strength and influence (Cain 1984, 168). The right to vote, for the vast majority of citizens, is the most effective means available for participating in representative government. Since electoral boundaries can affect the capacity of citizens to influence the outcome of elections, it is essential that the process for drawing these boundaries be as fair and open as possible.

In one of Canada's most broad and comprehensive exercises in public consultation, groups and individuals are given the opportunity to make representations to boundaries commissions regarding their respective communities of interest. In recognition of the fact that the process is most effective when there is extensive public consultation, the Electoral Boundaries Readjustment Act provides that boundaries commissions must each hold at least one meeting to hear representations from the public (Canada, Electoral Boundaries Readjustment Act, s. 19(1)). Boundaries commissions generally exceed this minimum requirement, however, holding several meetings in various locations throughout all regions of the province to encourage the participation of as many people as possible. To ensure that those members of the public interested in making representations are given sufficient opportunity and information to do so, an advertisement containing notice of the time and place for the public hearings, along with preliminary maps showing the proposed electoral districts and accompanying explanatory material, is published in the Canada Gazette and in general circulation newspapers at least 60 days before the commencement of the hearings (ibid., s. 19(2), s. 19(3)). During the 1986 redistricting exercise, boundaries commissions considered a total of nearly 1500 written and oral representations from the public, a number which compares most favourably with almost every other exercise in public consultation conducted on behalf of the federal government.

In their preliminary plans, boundaries commissions attempt to design electoral districts which respect local communities of interest while maintaining relatively comparable populations. Subsequently, boundaries commissions welcome representations from the public at hearings which may provide the commissioners with "helpful information about local communities of interest not otherwise available" to them (Canada, Federal Electoral Boundaries Commission 1987d, 8). The commission may then revise its proposals to reflect the views of those who made representations, provided this can be accomplished while adhering to the population criterion. The report of the 1987 Boundaries Commission for the Province of Ontario illustrates the impact and importance of public input. The Ontario Commission received 238 oral and 99 written representations and made revisions to 67 of 99 proposed electoral districts in response to the public's recommendations (ibid., 6).

Since political representation in Anglo-Canadian theory and practice has always been largely based on territorial communities, and since the recognition of communities has been encouraged through the concept of population variance, there has been little need in Canada for the development of a strict definition of community of interest. In the United States, on the other hand, community of interest has been

the focus of significant debate in the last 30 years, a situation which occurred in response to the American reapportionment revolution of the 1960s when population equality among electoral districts became the primary consideration in redistricting (Stewart 1991). Among the communities of interest that have been the subject of more extensive analysis in the United States than in Canada in recent years are those characterized by shared racial or ethnic origin. An examination of the competing positions in this debate in the United States illustrates the issues to be addressed in Canadian electoral district design.

While plans that deliberately dilute the influence of minority communities of interest are now universally condemned, there are opposing views regarding the degree to which race and ethnicity should be respected in the redistricting process (Cain 1984, 66). One view suggests that communities of interest based on shared racial or ethnic orientation are as legitimate a consideration as any other community of interest, that is, neither to be ignored nor accorded special consideration (Stewart 1991). Another view, disputing the notion that "non-whites can best represent non-whites and whites can best represent whites" (Cain 1984, 67), argues that the political system should be "colour blind," that any consideration of racial factors would only entrench racial divisions in the redistricting process (*The Economist* 1991b, 28).

A third view holds that it is imperative that geographic distribution of minority groups be considered where minority groups have historically been disadvantaged, so that electoral districts will be designed to maximize both the political efficacy of minority groups and the potential for minority groups, in proportion to their strength, to elect representatives of their choice. Only in this way, it is argued, will previously disadvantaged minorities gain access to the political process and achieve fair representation. This practice, often referred to as affirmative gerrymandering, has become the focus of much debate in the United States where in recent years redistricting legislation has evolved from "passive protection" to "active encouragement" of minority group representation (Cain 1984, 66).

The federal *Voting Rights Act of 1965*, considered by many to be one of the most important of the American civil rights statutes (Days and Guinier 1984, 167), removed all barriers designed to "deny or abridge the right of any citizen of the United States to vote on account of race or colour" (Thernstrom 1987, 247). It further forbade deliberate attempts by the white majority to redistrict for the purpose of racial discrimination and required that certain states submit their proposed redistricting plans to the federal Department of Justice for careful examination as a safeguard against violations of the Act (ibid.).

In the nearly three decades since the introduction of the Voting Rights Act, the American courts have significantly expanded the definition of racially discriminatory redistricting (Congressional Quarterly 1990, 29). Originally, when assessing a proposed redistricting plan, the Justice Department considered the comparative change between the old and the new maps to determine if minority voters would be in a more disadvantaged position under the new plan than under that currently in use (ibid.). An amendment of 1982 to the Act, however, is generally interpreted as requiring legislatures to create the maximum possible number of districts in which minority groups, primarily Blacks and Hispanics, constitute a majority of the voting population (Morganthau 1991, 20). Furthermore, according to the 1982 amendment, the effect of any plan for electing minority group candidates, and not merely its intent, may be examined (Reinhold 1991a, A28). Therefore, in assessing a redistricting plan, the Justice Department considers evidence that a minority group is being denied the opportunity to elect its own candidates when the group's numbers and residential concentration clearly indicate that it should be able to do so (Congressional Quarterly 1990, 29). The Justice Department has taken the notion of guaranteed representation even further by suggesting that since minority group populations generally participate in the political process at a lower rate than majority populations, 60 percent is the absolute minimum population required in any given electoral district in the United States to provide a minority candidate a reasonable opportunity to win an election, particularly when opposing a nonminority incumbent (Lee 1991b).

Central to the debate about how best to redistrict for the purpose of enhancing the electoral representation of minority groups is the growing question of whether minorities are more empowered when they are concentrated in a few districts in which, as the majority, they are more likely to elect candidates from their own group, or when they are dispersed among a greater number of districts where their numbers are sufficient to constitute a potent and influential plurality that must be "courted" by all candidates (Parker 1984, 106). Electoral districts in the United States drawn so that minorities represent less than 60 percent of the population have been criticized by the National Association for the Advancement of Colored People (NAACP) and others for being inadequate to constitute guaranteed political majorities and, therefore, unlikely to have the required effect of electing minority group candidates (Kerr 1991, A1).

In many instances, minority groups constitute significant proportions of the population in particular geographic areas, but not in sufficient numbers to constitute a majority regardless of district design.

Consequently, the creation of "minority-influenced" electoral districts, in which a minority group constitutes a significant plurality, is the most effective means of enhancing minority electoral representation in particular areas. For example, the New York City municipal districting plan adopted in June 1991 included an "Asian-influenced" district in the area known as the Lower East Side. There were insufficient Asian-American residents in the area to constitute an electoral majority. The New York City Districting Commission deemed that it was possible, however, to create a district which would leave intact the Asian-American community of interest and provide it with an influential plurality of 39 percent of the population (Lee 1991b). "Asian-Americans for Equality" supported the plan (Lee 1991d), thereby suggesting that when a majority is not possible, a minority-influenced district is considered an acceptable alternative.

In Canada, although political representation is based on territorial communities, groups are seldom geographically concentrated in sufficient numbers to create electoral districts in which any single minority community of interest constitutes a majority (Stewart 1991). Furthermore, Canada has not experienced, in recent times at least, the same degree of prolonged discrimination and rigorous political exclusion of minority groups as the United States, which would be perceived as justifying such a measure (ibid.). In fact, as reflected recently on the editorial page of at least one large-circulation Canadian newspaper, some people in this country might view the American model of affirmative gerrymandering with suspicion, arguing that there is a narrow line between a designated multicultural riding and a "political ghetto," between fair representation and tokenism (Toronto Star 1991, A16). In contrast, efforts by certain provinces, Nova Scotia, for example, to redress seat allocations for Aboriginals and other minorities indicate a realization that there is a representation problem in this country which requires action.

While the issue of minority representation has been accorded less attention in Canada than in the United States, it is now becoming an increasingly important consideration in Canadian electoral district design. Alan Cairns suggests that in recent years, many industrialized democracies have experienced a movement toward an enhanced sense of group identity and diversity (Cairns 1990, 8). He further states that in Canada, this movement coincided with the creation of the *Canadian Charter of Rights and Freedoms*, an instrument that not only guarantees equal rights to all Canadians, but specifically mobilizes Canadians in terms of their distinct identities and encourages them to assert their group claims. These groups, including women, the disabled, multicultural groups and Aboriginals, have a general "sense of being

marginal, of having been historically maltreated, or having experienced specific examples of discrimination" (Cairns 1990, 10). Consequently, they are doubtful of the ability of persons who do not belong to their particular group to represent them and protect their interests.

It has been suggested that the failure of electoral district design to accommodate Aboriginal communities of interest has been a major contributing factor in the virtual exclusion of Aboriginals from the political process (Marchand 1990, 9). The broad geographic distribution of Aboriginal people and the reluctance of boundaries commissions to explore special means of addressing their situation has left Aboriginals numerical minorities in all but the two electoral districts in the Northwest Territories and one electoral district south of the 60th parallel (Churchill, Manitoba). This situation has led to calls by Aboriginal leaders for reforms that would permit their people to achieve a fairer degree of political recognition and representation.

It is not possible to create any great number of majority Aboriginal electoral districts in Canada. Yet, it is possible to create a significant number of minority-influenced districts in which Aboriginal people constitute a minimum of 20 percent of the total population. In Canada's multi-party and "first past the post" system, the winning candidate in an election does not require a majority of the votes cast, but only more votes than any other candidate. Therefore, through effective organization and mobilization, Aboriginal-influenced districts have a reasonable opportunity either to elect Aboriginal representatives to the House of Commons or to determine the winning candidate.

The design of minority-influenced electoral districts is an effective means of enhancing Aboriginal representation in Canada. By fully recognizing Aboriginal communities of interest in the application of the community-of-interest criterion, it is possible to design Aboriginal-influenced electoral districts within the bounds of comparable population as prescribed by the *Electoral Boundaries Readjustment Act* in which the population of Aboriginal people would be sufficient to wield a significant degree of electoral strength and influence the outcome of an election. If Aboriginal people perceive that they have a fair and reasonable opportunity to contribute to the political agenda and influence the outcome of elections, they will have a greater incentive to participate in the political process. This increased participation, in turn, could potentially enable Aboriginal communities to elect "one of their own" to the House of Commons.

#### PROPOSED ELECTORAL DISTRICTS

Aboriginal representatives have expressed a strong sense of frustration and alienation at the failure of electoral district design to accommodate

Aboriginal communities of interest, which many believe to be a major contributing factor in the virtual exclusion of Aboriginals from the political process. Senator Len Marchand has suggested that one possible reason for this failure is the "north–south axis" along which the boundaries of northern electoral districts have been drawn; that is, the design of electoral districts which extend from north to south, including populations from both areas. This has diluted the concentration of Aboriginal votes because of the greater non-Aboriginal population concentrated in the more southern towns.

This section presents a proposed redistricting plan that attempts to demonstrate that by fully recognizing Aboriginal communities of interest in the application of the community-of-interest criterion, it is possible to create Aboriginal-influenced electoral districts in which Aboriginal people constitute a minimum of 20 percent of the total population. The rationales for the proposed electoral districts are presented in a province-by-province format along with detailed descriptions and accompanying maps which depict the proposed boundaries.

This redistricting plan is limited to the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Northern Ontario and northern Quebec. Because of insufficient numbers in the Atlantic region, it is not possible to create districts with substantial Aboriginal populations in any of the four provinces in that part of the country.

Before commencing the redistricting exercise, it was first necessary to compile reliable Aboriginal population and location data because no such data currently exist. The methodology for determining reliable estimates for the Aboriginal population of Canada for the year 1986 employed data from the 1986 census, the Department of the Secretary of State and the Department of Indian and Northern Affairs. The methodological approach for determining the location of Aboriginals followed a sequence of three steps and is described in the appendix. These data permitted the identification of the specific areas in each province where Aboriginal people are geographically concentrated in sufficient numbers that the boundaries may reasonably be redrawn to create the proposed electoral districts described herein.

In attempting to design the maximum number of Aboriginal-influenced electoral districts, every effort has also been made to remain within the bounds of comparable population. Although the creation of these districts would be easier within the current permitted population variance of ±25 percent, it is demonstrated that even within a ±15 percent variance, it is still possible to create the desired districts. Within this variance, the long-standing Canadian tradition of creating rural constituencies with somewhat smaller populations than their

urban neighbours has been maintained, thereby affording Aboriginal populations in primarily rural communities the opportunity to achieve greater electoral influence.

It is appropriate that the boundaries of Aboriginal-influenced electoral districts coincide with the boundaries of treaty areas. Therefore, the boundaries of the Canada Indian Treaty Areas have been determined, and, wherever possible, the boundaries of the proposed electoral districts follow these in close proximity (Canada, Department of Energy, Mines and Resources 1991).

#### **British Columbia**

British Columbia's large Aboriginal population is broadly dispersed in many regions of the province. Indeed, 9 of BC's 32 electoral districts have Aboriginal populations of more than 5 000, including one, Skeena, with a substantial Aboriginal minority of approximately 20 000 people.

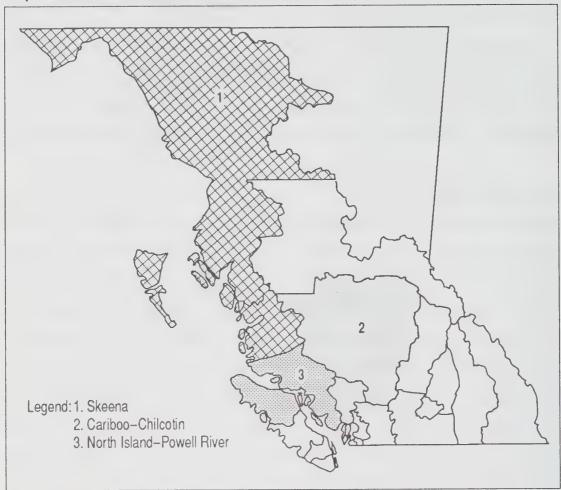
British Columbia's Aboriginal community is also unique in that it is largely integrated with its non-native neighbours. The isolation of the Aboriginal population so evident in other provinces is not prevalent in British Columbia. Due to the integration of the Aboriginal population, any major realignment that might seek to enhance Aboriginal representation in the province's north, for example, would have little impact. A reorientation of Prince George's two districts along urban/rural lines does nothing to alter existing levels of Aboriginal electoral influence in that area.

Rather than attempting to alter radically the present configuration of electoral districts in British Columbia, the objective should be rather to ensure that districts with substantial Aboriginal minorities are preserved within the desirable variance of the population quotient. Skeena, with an Aboriginal population of approximately 30 percent, is significantly below the electoral quotient as is another Aboriginal-influenced district, Cariboo–Chilcotin.

The enlargement of Skeena to meet standards of equality with other BC electoral districts must be undertaken while ensuring its Aboriginal population is maintained at levels sufficiently large for meaningful electoral influence. Accordingly, the Central Coast Regional District, with its Aboriginal population of approximately 2 000, is removed from North Island–Powell River and added to Skeena to bring its total Aboriginal population to 24 010 of 77 420.

The approach is similar in Cariboo–Chilcotin. Aboriginal influence in this enlarged electoral district is enhanced with the inclusion of Squamish–Lillooet Regional District Subdivision B from neighbouring Capilano–Howe Sound. To compensate for this loss of population, it

Figure 7.1
Proposed electoral districts — British Columbia



Note: Solid lines indicate existing electoral district boundaries.

is suggested that Capilano–Howe Sound absorb additional population from other lower mainland electoral districts, many of which currently strain the maximum allowable population variance.

#### Skeena

Total population: 77 420

Variation from quotient: -13.1% Total Aboriginal population: 24 010

Aboriginal percentage of total population: 31.0%

Technical description: Consisting of that part of British Columbia lying west of the Peace River Regional District, north and west of the Bulkley–Nechako Regional District, west of the Cariboo Regional District and north of the Mount Waddington Regional District; the Skeena–Queen Charlotte Regional District; the Kitimat–Stikine Regional District; the Central Coast Regional District; the Stikine Regional District; and Electoral Area A of Bulkley–Nechako Regional District.

#### Cariboo-Chilcotin

Total population: 85 710

Variation from quotient: –3.8% Total Aboriginal population: 9 320

Aboriginal percentage of total population: 10.9%

Technical description: Consisting of the Cariboo Regional District; the Squamish–Lillooet Regional District; and that part of the Thompson–Nicola Regional District lying to the west of the east boundaries of Electoral Areas E and I.

#### North Island-Powell River

Total population: 83 590

Variation from quotient: –6.1% Total Aboriginal population: 8 660

Aboriginal percentage of total population: 10.4%

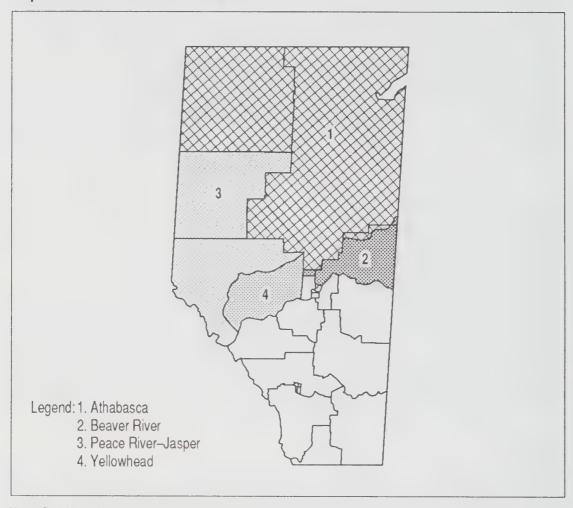
Technical description: Consisting of the Mount Waddington Regional District; that part of the Comox–Strathcona Regional District which lies to the north and west of the north and west boundaries of Electoral Area C; the Sunshine Coast Regional District; and the Powell River Regional District, except Electoral Area E.

#### Alberta

Aboriginal electors in northern Alberta suffer from a fragmentation of their voting strength as a result of the north–south dividing line that separates them into two electoral districts. Aboriginal people form increasingly larger majorities of the population as one moves farther north in the province. Consequently, any move to enhance Aboriginal electoral strength must seek to reorient the electoral districts of Athabasca and Peace River on an east–west basis.

The relatively small population of the existing Athabasca electoral district provides an opportunity to include within it Aboriginal people currently located in the adjacent constituency to the west, Peace River. Furthermore, non-Aboriginal populations in the south end of Athabasca in and around the community of Westlock can be accommodated in relatively underpopulated Beaver River to the south. The addition of non-Aboriginal populations only marginally affects Beaver River's 15.1 percent minority Aboriginal population. This further enhances the Aboriginal voting strength of Athabasca. In so changing the boundaries in northern Alberta, consideration can also be given to recognizing the treaty area boundaries of the region. The national park at Jasper and that part of existing Yellowhead north of the Athabasca River are accordingly allocated to the newly named district of Peace River–Jasper

Figure 7.2
Proposed electoral districts — Alberta



Note: Solid lines indicate existing electoral district boundaries.

such that all of 1899 Treaty Area No. 8 can be located in the two northerly districts of the province. Furthermore, the slight southerly displacement of the boundary separating the electoral districts of Athabasca and Beaver River is designed to reflect this treaty boundary.

#### Athabasca

Total population: 78 270

Variation from quotient: –14.0% Total Aboriginal population: 21 760

Aboriginal percentage of total population: 27.8%

Technical description: Consisting of all that portion of the Province of Alberta lying north of the following described line: Commencing at the intersection of the west boundary of the province with the 57th parallel of latitude; thence east along said parallel of latitude to the 115th line of longitude; thence south along said line of longitude to the

south boundary of Range 89; thence west along said south boundary to the 116th line of longitude; thence south along said line of longitude to the 56th parallel of latitude; thence west along said parallel of latitude to the 117th line of longitude; thence south along said line of longitude to the 55th parallel of latitude; thence east along said parallel of latitude to the east boundary of Range 8; thence south along said east boundary to the north boundary of Range 64; thence east along said north boundary to the east boundary of Range 2; thence south along said east boundary to the north boundary of Range 59; thence east along said north boundary to the west boundary of Range 22; thence north along said west boundary to the south boundary of Range 63; thence east along said south boundary to the west boundary of Range 17; thence north along said west boundary to the south boundary of Range 65; thence east along said south boundary to the west boundary of Range 16; thence north along said west boundary to the south boundary of Range 69; thence east along the north and east shores of Lac la Biche to the east boundary of Range 12; thence easterly and northerly along the boundary of the Primrose Lake Air Weapons Range to the southeast shore of Winefred Lake; thence east to the east boundary of the province.

#### Beaver River

Total population: 80 960

Variation from quotient: –11.0% Total Aboriginal population: 12 240

Aboriginal percentage of total population: 15.1%

Technical description: Commencing at the intersection of the left bank of the North Saskatchewan River with the east boundary of the Province of Alberta; thence westerly along said left bank to the easterly boundary of the City of Edmonton; thence northerly and westerly along said boundary to the east boundary of Range 25; thence north along said east boundary to the 54th parallel of latitude; thence west along said parallel of latitude to the east boundary of Range 2; thence north along said east boundary to the south boundary of Range 60; thence east along said south boundary to the west boundary of Range 22; thence north along said west boundary to the south boundary of Range 63; thence east along said south boundary to the west boundary of Range 17; thence north along said west boundary to the south boundary of Range 65; thence east along said south boundary to the west boundary of Range 16; thence north along said west boundary to the south boundary of Range 69; thence east along the north and east shores of Lac la Biche to the east boundary of Range 12; thence easterly and northerly along the boundary of the Primrose Lake Air Weapons Range

# 322 Drawing the Map

to the southeast shore of Winefred Lake; thence east to the east boundary of the province.

Peace River-Jasper

Total population: 101 580

Variation from quotient: +11.6%

Technical description: Commencing at the intersection of the west boundary of the Province of Alberta with the 57th parallel of latitude; thence east along said parallel of latitude to the 115th line of longitude; thence south along said line of longitude to the south boundary of Range 89; thence west along said south boundary to the 116th line of longitude; thence south along said line of longitude to the 56th parallel of latitude; thence west along said parallel of latitude to the 117th line of longitude; thence south along said line of longitude to the 55th parallel of latitude; thence east along said parallel of latitude to the east boundary of Range 8; thence south along said east boundary to the north boundary of Range 64; thence east to the Athabasca River; thence southerly and westerly along the Athabasca River to Jasper National Park; thence southeasterly and southwesterly along the boundary of said park to the western boundary of the Province of Alberta; thence northwesterly and northerly along said boundary to the point of commencement.

#### Yellowhead

Total population: 81 490

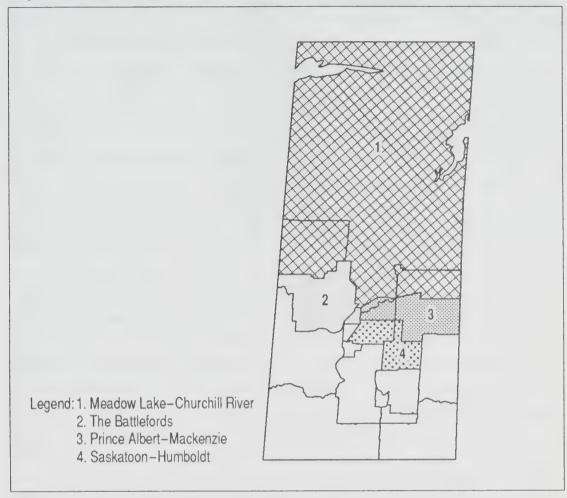
Variation from quotient: -10.4%

Technical description: Commencing at the intersection of the Athabasca River with the south boundary of Range 65; thence east along said south boundary to the west boundary of Range 1; thence south along said west boundary to its intersection with the left bank of the North Saskatchewan River; thence southwesterly along said left bank to its intersection with the left bank of the Brazeau River; thence southwesterly along said left bank to its intersection with the northern boundary of Jasper National Park; thence northwesterly along said northern boundary to its intersection with the Athabasca River; thence northeasterly along the Athabasca River to the point of commencement.

## Saskatchewan

The Aboriginal population of Saskatchewan is concentrated in the northern part of the province. The 1987 redistricting made some progress toward enhancing the opportunities for Aboriginal representation by eliminating the division of northern Saskatchewan along a north–south axis. Although most of the northern half of the province is now contained





Note: Solid lines indicate existing electoral district boundaries.

in one constituency (Prince Albert–Churchill River), there remains, nonetheless, a concentration of non-Aboriginal residents in and around the city of Prince Albert, who, by their inclusion in this northern constituency, serve to dilute the influence of Aboriginal electors elsewhere in the district. Furthermore, a number of northern Saskatchewan's Aboriginal people reside in the adjacent constituency of The Battlefords–Meadow Lake. Aboriginal minorities of approximately 10 percent are also located in the existing constituency of Mackenzie and in two of the three constituencies in Regina.

The electoral district of Prince Albert–Churchill River is large, both geographically (49 percent of the land mass of the province) and in terms of population relative to other Saskatchewan districts. Indeed, only four others are larger in population. Independent of Aboriginal calls for greater electoral influence in Prince Albert–Churchill River, the logistical difficulties encountered by any member of Parliament in

serving such a large constituency justify a population at the low end of the deviation from the quotient. Accordingly, a new constituency, Meadow Lake—Churchill River, is proposed; incorporating most of the existing Prince Albert—Churchill River and the largely Aboriginal population currently contained in the adjacent constituencies of The Battlefords—Meadow Lake and Mackenzie. To compensate for the additions to this new electoral district, the city of Prince Albert and its adjacent communities south of the North Saskatchewan River are shifted to the proposed district of Prince Albert—Mackenzie to the south.

The creation of Meadow Lake–Churchill River, with a 40 percent Aboriginal population, does not prevent the preservation of two other northern Saskatchewan electoral districts where Aboriginals can maintain a significant minority voice. Hence, the new district of The Battlefords maintains an Aboriginal minority population of approximately 20 percent, similar to that of existing The Battlefords–Meadow Lake. Likewise, Prince Albert–Mackenzie has a 15 percent Aboriginal population; an increase over existing Mackenzie. To accommodate these aforementioned changes, the electoral district of Saskatoon–Humboldt is displaced to the southeast. This has no direct implications for the number of Aboriginal people living in the district.

Lastly, the northern half of the City of Regina is currently divided. However, due to the concentration of the Aboriginal population in this area, it is suggested that every reasonable effort be made to create a north-end urban Regina electoral district in which Aboriginals would represent approximately one-quarter of the total population.

# Meadow Lake-Churchill River

Total population: 65 940

Variation from quotient: -7.4%

Total Aboriginal population: 26 780

Aboriginal percentage of total population: 40.6%

Technical description: Consisting of all that portion of the Province of Saskatchewan lying north of the following described line. Commencing at the intersection of the west boundary of the province with the south boundary of Range 56; thence east along said south boundary to the west boundary of Range 18; thence south along said west boundary to the north boundary of Range 53; thence east along said north boundary to the west boundary of Range 17; thence south along said west boundary to the north boundary of Range 52; thence east along said north boundary to the west boundary of Range 13; thence north along said west boundary to the south boundary of Range 56; thence east along said south boundary to the west boundary of Range 56; thence east along said south boundary to the west boundary of Range 12; thence

north along said west boundary to the 54th parallel of latitude; thence east along said parallel of latitude to the west boundary of Range 9; thence north along said west boundary to the 16th Base Line; thence east along said 16th Base Line to the west boundary of Prince Albert National Park; thence south, southeasterly and east along the west and south boundaries of said park to the west boundary of Range 3; thence south along said west boundary to the north boundary of Township 47; thence east along said north boundary to the North Saskatchewan River; thence easterly and northerly along the North Saskatchewan River, including the town of Nipawin, to the point where said river intersects with the east boundary of Range 13; thence south along said east boundary to the 13th Base Line; thence east along said 13th Base Line to the eastern boundary of the province.

## The Battlefords

Total population: 63 020

Variation from quotient: -11.5% Total Aboriginal population: 11 990

Aboriginal percentage of total population: 19.0%

Technical description: Commencing at the intersection of the west boundary of the Province of Saskatchewan with the north boundary of Range 55; thence east along said north boundary to the west boundary of Range 18; thence south along said west boundary to the north boundary of Range 53; thence east along said north boundary to the west boundary of Range 17; thence south along said west boundary to the north boundary of Range 52; thence east along said north boundary to the west boundary of Range 13; thence north along said west boundary to the south boundary of Range 56; thence east along said south boundary to the west boundary of Range 12; thence north along said west boundary to the 54th parallel of latitude; thence east along said parallel of latitude to the west boundary of Range 9; thence north along said west boundary to the 16th Base Line; thence east along said 16th Base Line to the west boundary of Prince Albert National Park; thence southeasterly along the west and south boundaries of said park to the west boundary of Range 3; thence south along said west boundary to the north boundary of Township 47; thence east along said north boundary to its intersection with the North Saskatchewan River; thence northeasterly along said river to the point where it intersects with the west boundary of Range 1; thence south along said west boundary to the south boundary of Range 42; thence west along said south boundary to the point where the North Saskatchewan River intersects with the east boundary of Range 7;

thence southerly, westerly and northwesterly along said North Saskatchewan River to the north boundary of Township 40, Range 12; thence west along said north boundary to the east boundary of Red Pheasant Indian Reserve No. 108; thence south and west along the east and south boundaries of said Indian reserve to the west boundary of Range 15, thence south along said west boundary to the north boundary of Township 39; thence west along said north boundary to the east boundary of the Town of Wilkie; thence south, west and north along the boundaries of said town to the north boundary of Township 39; thence west along said north boundary to the west boundary of Range 21; thence north along said west boundary to the north boundary of Township 42; thence west along said north boundary to the west boundary of Range 22; thence north along said west boundary to the North Saskatchewan River; thence northwesterly along said river to the west boundary of the province; thence north along said west boundary of the province to the point of commencement.

#### Prince Albert-Mackenzie

Total population: 73 230

Variation from quotient: +2.9%

Total Aboriginal population: 10 620

Aboriginal percentage of total population: 14.5%

Technical description: Commencing at the intersection of the south boundary of Range 49 with the east boundary of the Province of Saskatchewan; thence south along said east boundary to the north boundary of Township 38; thence west along said north boundary to the west boundary of Range 9; thence south along said west boundary to the north boundary of Range 36; thence west along said north boundary to the east boundary of Range 16; thence north along said east boundary to the south boundary of Range 43; thence west along said south boundary to the east boundary of Range 2; thence north along said east boundary to the North Saskatchewan River; thence east and north along the North Saskatchewan River, excluding the Town of Nipawin, to the point where said river intersects with the east boundary of Range 13; thence south along said east boundary to the 13th Base Line; thence east along said 13th Base Line to the point of commencement.

# Saskatoon-Humboldt

Total population: 78 430

Variation from quotient: +10.2%

Technical description: Commencing at the intersection of the South Saskatchewan River with the westerly production of 8th Street in the City of Saskatoon; thence east along said westerly production of 8th Street to the east corporate limit of the City of Saskatoon; thence northwesterly and northerly along said corporate limit to Highway No. 5; thence northeasterly and easterly along said highway to the west boundary of Range 3; thence south along said west boundary to the north boundary of Township 35; thence east along said north boundary to the east boundary of Range 21; thence south along said east boundary to the north boundary of Range 27; thence east along said north boundary to the west boundary of Range 9; thence north along said west boundary to the south boundary of Range 37; thence east along said south boundary to the east boundary of Range 16; thence north along said east boundary to the south boundary of Range 43; thence west along said south boundary to the east boundary of Range 2; thence south along said east boundary to the South Saskatchewan River where it intersects with the north boundary of Range 41; thence southwesterly along said river to the point of commencement.

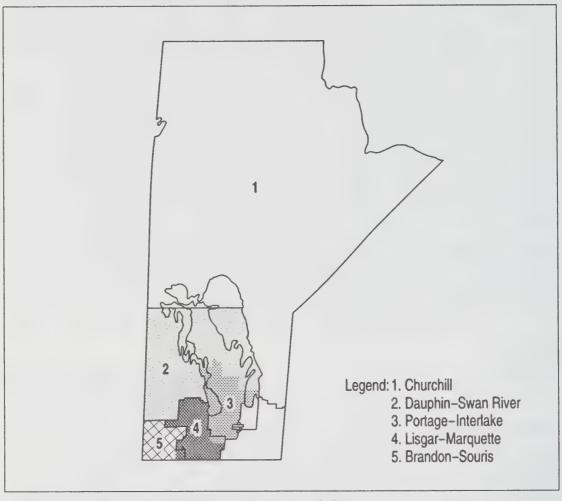
#### Manitoba

A substantial plurality, over 40 percent, of Manitoba's Aboriginals are residents of the electoral district of Churchill. Manitoba's situation is unique in that no other province has such a concentration of Aboriginals in one electoral district. To further enhance the electoral strength of Aboriginal voters in that riding, suggestions have been made that the populations of two southern towns, Flin Flon and The Pas, be allocated to an adjacent electoral district. However, Churchill's population is already 10 percent below the electoral quotient, and the removal of these two communities to an electoral district to the south would result in far too small a population in that electoral district. Furthermore, such a move would jeopardize the promotion of Aboriginal interests in neighbouring districts where otherwise favourable changes could be made.

A further 20 percent of Manitoba's Aboriginal population is located in the Interlake and Dauphin–Swan River regions of the province. But with this area split between two electoral districts, the electoral strength of the area's Aboriginal population is not fully realized. A realignment of these two constituencies along an east–west axis would greatly enhance the prospect of Aboriginal Canadians electing one of their own in a district drawn more according to their population distribution in the area.

The electoral district of Churchill will not change. The inclusion in Dauphin–Swan River of northern regions of the Interlake with a high Aboriginal population results in an electoral district with an Aboriginal population of more than 20 percent. This extraction from

Figure 7.4
Proposed electoral districts — Manitoba



Note: Solid lines indicate existing electoral district boundaries.

Portage–Interlake is compensated for by a minor ripple through Lisgar–Marquette and into Brandon–Souris, which is already unduly large for a primarily rural electoral district.

Finally, a concentration of Aboriginals in the north end of Winnipeg, and in the electoral district of Winnipeg North Centre specifically, provides opportunities to enhance Aboriginal strength there. The 15 000 Aboriginals in this area of the city would benefit from a reduction in the population of both the Winnipeg North Centre and Winnipeg North ridings, which both have populations above the provincial electoral quotient of 75 930 (82 688 and 84 570 respectively). Winnipeg–St. James (population 75 009) would be an appropriate recipient of non-Aboriginal populations residing in the west ends of either or both of these aforementioned districts.

#### Churchill

Total population: 68 910

Variation from quotient: -9.2%

Total Aboriginal population: 41 040

Aboriginal percentage of total population: 59.5%

Technical description: Consisting of that part of the Province of Manitoba which lies to the north and east of the following described boundary. Commencing at the intersection of the west boundary of Manitoba with the 53rd parallel of latitude; thence easterly along said parallel of latitude to the east shore of Lake Winnipeg; thence southerly along said east shore of Lake Winnipeg to the north limit of Fort Alexander Indian Reserve No. 3; thence easterly and southerly along the north and east limits of said Indian reserve to the north limit of Township 18; thence easterly along said north limit of Township 18 to the east limit of R10E1; thence southerly along said east limit of R10E1 to the north limit of fractional Township 18; thence easterly along said north limit of fractional Township 18 to the east limit of R11E1; thence southerly along said east limit of R11E1 to the north limit of Township 17; thence easterly along said north limit of Township 17 to the east limit of R14E1; thence southerly along said east limit of R14E1 to the northeast corner of Section 24 Tp 16 R14E1; thence easterly along the north limits of Sections 19, 20, 21, 22, 23 and 24 Tp 16 R15 and 16 E1 to the east limit of R16E1; thence northerly along said east limit of R16E1 to the north limit of Tp 16; thence easterly along said north limit of Tp 16 to the east boundary of Manitoba.

# Dauphin-Swan River

Total population: 69 940

Variation from quotient: -7.9%

Total Aboriginal population: 14 450

Aboriginal percentage of total population: 20.7%

Technical description: Commencing at the intersection of the west boundary of Manitoba with the 53rd parallel of latitude; thence east along said parallel of latitude to the east shore of Lake Winnipeg; thence southerly along said shore to the 51st parallel of latitude; thence west along said parallel of latitude to the west shore of Lake Winnipeg; thence north along the west boundary of Range 5 to the south boundary of Range 27; thence west along the north boundary of Census Division 8 to the west shore of Lake Manitoba; thence south along said west shore to the north boundary of Range 17; thence west along the north boundaries of Census Divisions 8 and 7 to the east boundary of Range 19; thence south along said east boundary to the north boundary of Range 12; thence west along said north boundary to the west boundary of Manitoba; thence northerly along said west boundary of Manitoba to the point of commencement.

Portage-Interlake

Total population: 70 230

Variation from quotient: -7.5

Technical description: Commencing at the intersection of the 51st parallel of latitude with the east shore of Lake Winnipeg; thence along the east, south and west shores of Lake Winnipeg to the south boundary of Range 18; thence west to the east boundary of Census Division 14; thence along the east and south boundaries of said census division to Census Division 10; thence along the north, east and south boundaries of the said census division to the west boundary of Range 2; thence south along said west boundary to the north boundary of Range 5; thence west along the north boundary of Range 5 to the east boundary of Range 7; thence north along said east boundary to the north boundary of Range 6; thence west along said north boundary to the east boundary of Range 8; thence north along said east boundary to the south boundary of Range 10; thence west along said south boundary to the east boundary of Range 9; thence north along said east boundary to Lake Manitoba; thence north along the west shore of said lake to the north boundary of Range 27; thence east along said north boundary to the east shore of Lake Manitoba; thence along the north border of Census Division 18 to the west shore of Lake Winnipeg; thence south along said shore to the 51st parallel of latitude; thence east along said parallel of latitude to the point of commencement.

# Lisgar-Marquette

Total population: 66 850

Variation from quotient: -12.0%

Technical description: The proposed boundary revisions are as follows: The southwest boundary shall commence at the intersection of the south boundary of the Province of Manitoba with the east boundary of Range 19 and continue north to the south boundary of Range 7; the southeast boundary shall commence at the intersection of the south boundary of the Province of Manitoba with the east boundary of Range 4 and continue north to the north boundary of Range 3; thence east along said north boundary to the west boundary of Range 2; thence north along said west boundary to the south boundary of Range 6; thence west along said east boundary to the north boundary of Range 6; thence west along said north boundary to the east boundary of Range 8; thence north to the south boundary of Range 10.

#### Brandon-Souris

Total population: 71 250

Variation from quotient: -6.2%

Technical description: The proposed boundary revision, to the southeast corner of the riding, is as follows. From the north limit of Range 6, the boundary shall continue south along the east boundary of Range 19 to the south boundary of the Province of Manitoba.

#### **Ontario**

Enhancing Aboriginal representation in Northern Ontario is a challenging exercise. All of the region's 11 electoral districts are substantially below the average riding population for the province. Indeed, in order to maintain 11 seats in the northern part of the province, the 1986 Ontario federal boundaries commission was forced to resort to the use of the "extraordinary circumstances" clause of the *Electoral Boundaries Readjustment Act*. This clause allows boundaries commissions to design electoral districts beyond the permitted population variance in situations where community of interest or geographic considerations warrant such a measure (Canada, *Electoral Boundaries Readjustment Act*, s. 15(2)(b)). Pressure to reduce the number of seats from 11 to 10 will continue to mount as the population of the area continues to drop.

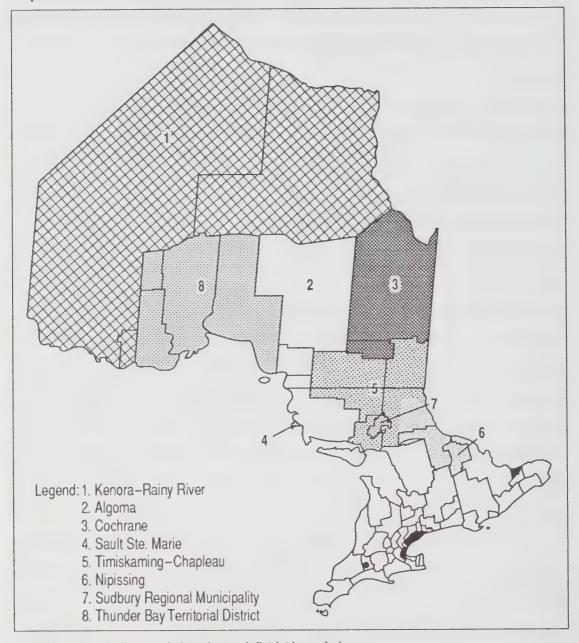
At the same time, an increase in population provincewide should be reflected in the addition of new seats for the province after the next census. With only 8.5 percent of the province's Aboriginal population, Northern Ontario stands a better chance of maintaining 10 seats if the number of electoral districts for the entire province is increased from its present allocation of 99. Such an increase would have the effect of reducing the electoral quotient from its 1986 figure of 90 921.

As a result of these considerations, it is proposed that Northern Ontario be allocated 10 seats. Under the present allocation, population variances of beyond 15 percent below the current quotient are unavoidable. However, an anticipated increase in the number of seats for the entire province following the 1991 redistribution should allow for the design of Northern Ontario's 10 districts within the desired 15 percent range.

Fully one-third of all Aboriginals in Northern Ontario reside in the existing electoral district of Kenora–Rainy River. In redrawing the map of Northern Ontario, a principal objective must be to ensure that changes to Kenora–Rainy River occur in such a way that its status as an electoral district with a substantial minority of Aboriginals is preserved. Accordingly, this district is enlarged to incorporate all of the Territorial District of Kenora, including that area north of the Albany River currently in Cochrane–Superior. In this way, the Aboriginal population in Kenora–Rainy River can be maintained at 30 percent of its total.

Likewise, the Aboriginal population in the Territorial Districts of Algoma and Manitoulin constitute an appreciable minority of the

Figure 7.5
Proposed electoral districts — Ontario



Note: Solid lines indicate existing electoral district boundaries.

population in the existing electoral district of Algoma. The inclusion of 1000 Aboriginals from the north and west to existing Algoma ensures that this district remains one with a significant Aboriginal electoral influence. The proposed changes to these two districts will ensure that Aboriginal influence is maintained in the substantially altered electoral map of Northern Ontario.

Kenora-Rainy River

Total population: 75 060

Variation from quotient: -17.4%

Total Aboriginal population: 23 270

Aboriginal percentage of total population: 30.1%

Technical description: Consisting of the Territorial District of Kenora

and the Territorial District of Rainy River.

# Algoma

Total population: 72 020

Variation from quotient: -20.8% Total Aboriginal population: 11 450

Aboriginal percentage of total population: 15.9%

Technical description: Consisting of the Territorial District of Algoma; the Territorial District of Manitoulin; and that part of the Territorial District of Cochrane lying west of the following described line: From the intersection of the north boundary of the Territorial District of Sudbury with the east boundary of the Territorial District of Algoma; thence north along said east boundary and in a line north to the south boundary of the Township of Val Rita—Harty; thence west along the south boundary of said township and along the south boundary of the Township of Opasatika to the west boundary of said township; thence north along the west boundary of said township and in a line north to the Albany River; including the Town of Hearst, the Constance Lake Indian Reserve and the Township of Mattice—Val Côté.

#### Cochrane

Total population: 75 510

Variation from quotient: −17.0%

Technical description: Consisting of that part of the Territorial District of Cochrane lying east of the following described line: From the intersection of the north boundary of the Territorial District of Sudbury with the east boundary of the Territorial District of Algoma; thence north along said east boundary and in a line north to the south boundary of the Township of Val Rita—Harty; thence west along the south boundary of said township and along the south boundary of the Township of Opasatika to the west boundary of said township; thence north along the west boundary of said township and in a line north to the Albany River; including the townships of Val Rita—Harty and Opasatika and the Town of Kapuskasing; excluding the Town of Iroquois Falls, the Township of Black River—Matheson, Cochrane Unorganized South-East Part and Cochrane Unorganized South-West Part.

Sault Ste. Marie (as existing)

Total population: 76 450

Variation from quotient: -16.0%

Technical description: Consisting of that part of the Territorial District of Algoma contained in (a) that part of the City of Sault Ste. Marie lying southerly and westerly of a line described as follows: Commencing at the intersection of the easterly limit of said city with the Third Line East; thence west along the Third Line East to Peoples Road; thence north along Peoples Road to Fourth Line West; thence west along Fourth Line West and its westerly production to the northerly production of Allen's Side Road; thence northerly along said production to the north limit of the City of Sault Ste. Marie; (b) that part of Rankin Location Indian Reserve No. 15D lying within the limits of the City of Sault Ste. Marie; and (c) the Township of Prince.

# Timiskaming-Chapleau

Total population: 75 010

Variation from quotient: -17.5%

Technical description: Consisting of the Territorial District of Sudbury; the Territorial District of Timiskaming; that part of the Territorial District of Cochrane including the Town of Iroquois Falls, the Township of Black River–Matheson, Cochrane Unorganized South-East Part and Cochrane Unorganized South-West Part.

# Nipissing

Total population: 77 890

Variation from quotient: -14.3%

Technical description: Consisting of the Territorial District of Nipissing.

# Sudbury Regional Municipality

Total population: 151 250

Variation from quotient: -17.0%

Technical description: Consisting of the Regional Municipality of Sudbury, which includes sufficient population for the creation of two constituencies, the boundaries of which are to be determined on the basis of the communities of interest in the municipality.

# Thunder Bay Territorial District

Total population: 153 910

Variation from quotient: -15.4%

Technical description: Consisting of the Territorial District of Thunder Bay, which includes sufficient population for the creation of two constituencies, the boundaries of which are to be determined on the basis of communities of interest in the district.

#### ENHANCING ABORIGINAL REPRESENTATION

### Quebec

Quebec's Aboriginal population is located in the north but is currently divided between two electoral districts: 12 000 Cree reside in Abitibi and the small Naskapi band resides in Manicouagan, with the Inuit population of approximately 9 000 divided between both. Aboriginal representation in Quebec is best enhanced if these groups are brought together in one electoral district. Because such a proposed electoral district would be geographically large and consequently difficult for a member of Parliament to serve, its justifiable claim to a total population at the low end of the variance scale would have the additional benefit of ensuring the greatest possible influence of Aboriginal electors in the district.

The existing electoral district of Manicouagan is relatively small in population and serves as an appropriate base upon which other communities to the west can be added. Consequently, some 10 000 Aboriginals from the municipality of James Bay, currently in Abitibi, are proposed for addition to Manicouagan to form the electoral district of Manicouagan–Baie James. With 19 940 of the district's 74 840 population, Aboriginals constitute 26.6 percent of the total. To compensate Abitibi for its population loss, some 5 400 of neighbouring Témiscamingue's population are added, thereby ensuring that all districts in the north are within –15 percent of the province's electoral quotient of 86 060.

# Manicouagan–Baie James

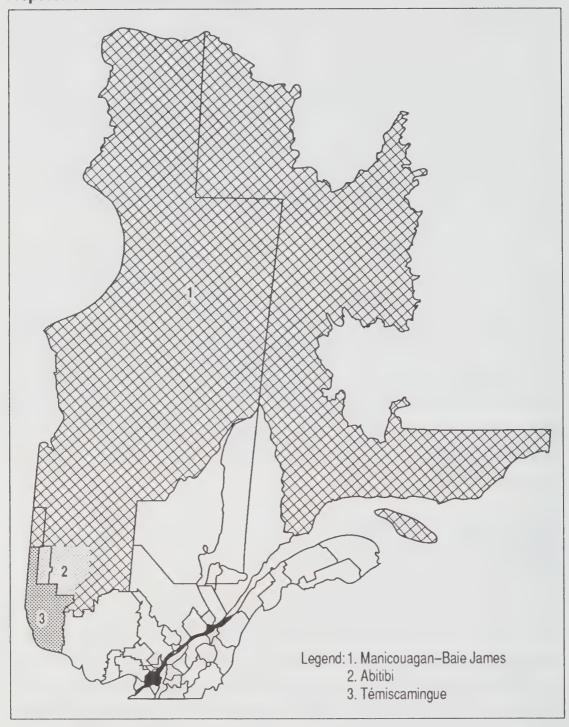
Total population: 74 840

Variation from quotient: –13.0% Total Aboriginal population: 19 940

Aboriginal percentage of total population: 26.6%

Technical description: Consisting of the whole of the Province of Quebec lying north of the following described line. Commencing at the intersection of the west boundary of the province with the north boundary of Census Division 84; thence east along said north boundary to Rivière Bell; thence south along said river, excluding the Town of Senneterre, to the northeast corner of Census Division 80; thence south along the east boundary of said census division to the south boundary of Census Subdivision 80928; thence east and north along the south and east boundaries of said census subdivision to the western boundary of Census Division 61; thence south along the western boundary of said census division to the north boundary of Census Subdivision 61958; thence northeast along the north boundary of said census subdivision to the north boundary of Census Subdivision 58938; thence east along

Figure 7.6
Proposed electoral districts — Quebec



Note: Solid lines indicate existing electoral district boundaries.

#### ENHANCING ABORIGINAL REPRESENTATION

the north boundary of said census subdivision to the south boundary of Census Division 84; thence east along the south boundary of said census division to the 75th line of longitude; thence north along said line of longitude to the 50 degrees 10′ parallel of latitude; thence east along said parallel of latitude to the west boundary of Census Division 90; thence northeasterly along the west boundary of said census division to the north boundary of Census Division 94; thence northeasterly along the north boundary of said census division to the 70th line of longitude; thence southeast along Rivière Mouchalagane to the Reservoir Manicouagan; thence south along the west shore of said reservoir to Rivière Manicouagan; thence south along said river to the Fleuve Saint-Laurent.

### Abitibi

Total population: 74 650

Variation from quotient: -13.3% Total Aboriginal population: 9 620

Aboriginal percentage of total population: 12.9%

Technical description: Commencing at the intersection of the 79th line of longitude with the north boundary of Census Division 84; thence east along said north boundary to the Rivière Bell; thence south along said river to the northeast corner of Census Division 83; thence south along the east boundary of said census division to the south boundary of Census Subdivision 83909; thence west and north to the north boundary of Census Division 83; thence west and north along the north boundary of said census division to the south boundary of Census Subdivision 84280; thence west and north along the south and west boundaries of said census subdivision to the southwest corner of Census Subdivision 84410; thence in a northwesterly line encompassing Census Subdivisions 84410, 84400, 84390, 84370, 84365, 84670, 84979 and 84735 to the point of commencement.

## Témiscamingue

Total population: 76 190

Variation from quotient: -11.5%

Technical description: Commencing at the intersection of the 50th parallel of latitude with the western boundary of the Province of Quebec; thence southerly and easterly along said boundary to the eastern boundary of Census Division 83; thence north along the eastern boundary of said census division to the south boundary of Census Subdivision 83909; thence west and north along the south and west boundaries of said census subdivision to the north boundary of Census

Division 83; thence west and north along the north boundary of said census division to the south boundary of Census Subdivision 84280; thence west and north along the south and west boundaries of said census subdivision to the southwest corner of Census Subdivision 84410; thence in a northwesterly line excluding Census Subdivisions 84410, 84400, 84390, 84370, 84365, 84670, 84979 and 84735 to the north boundary of Census Division 84; thence west along the north boundary of said census division to the point of commencement.

### CONCLUSION

Respect for community of interest is an important factor in the development of political efficacy. Through collective action, a group of individuals with common values, interests and concerns can contribute to the political agenda and influence the outcome of an election. Yet when a community of interest is fragmented and dispersed among several electoral districts, the group's numbers may no longer be sufficient in any single district to constitute a significant voting bloc. The individual's vote is diluted, and the incentive to participate in the political process is weakened. This is the situation in which Aboriginal people find themselves in Canada today.

In the United States, minority populations, specifically Black and Hispanic people, have experienced a comparable history of vote dilution and political exclusion, although, most would agree, in a more deliberately discriminatory manner. To remedy the situation and increase the opportunities for the election of minority candidates, the Americans now employ affirmative gerrymandering to create, where possible, districts in which minority populations constitute an effective voting majority to ensure that large minority communities have the opportunity to elect "one of their own." In areas where a minority group may constitute a significant proportion of the population but not a sufficient number to constitute a majority regardless of the way in which districts are drawn, the creation of minority-influenced electoral districts may be considered as an appropriate means for enhancing minority representation.

The proposed districting plan described in this study demonstrates that it is possible to enhance Aboriginal representation in Canada within the existing system of electoral district design. By giving priority to the Aboriginal community of interest in the application of the community-of-interest criterion found in the *Electoral Boundaries Readjustment Act*, it is possible to create Aboriginal-influenced electoral districts within a  $\pm$  15 percent variation from provincial electoral quotients, a measure of equality even more stringent than that presented by the existing

provisions of the Act. In these districts, Aboriginals constitute, not necessarily a majority, but a proportion of the population sufficient to wield a significant degree of political strength and influence and to have the potential capability of electing Aboriginal representatives to the House of Commons.

The described redistricting plan proposes the creation of seven Aboriginal-influenced electoral districts, including one riding with an Aboriginal population of nearly 60 percent, one riding with greater than 40 percent, two with greater than 30 percent, two with greater than 25 percent and one with greater than 20 percent. When combined with the three existing Aboriginal-influenced electoral districts in the Yukon and Northwest Territories, these 10 districts represent 3.4 percent of the 295 seats in the House of Commons, which is comparable to the Aboriginal proportion of 3.6 percent of the total Canadian population. There are eight additional proposed ridings in which Aboriginals represent at least 10 percent of the total population.

This districting plan is based on the Canadian experience that a likeminded group may be politically effective, or even dominant, within a constituency without constituting a majority provided it acts as a cohesive bloc. The responsibility, once the opportunity is presented, is clearly on the group to organize its participation in the political process.

In any nomination process for recognized parties, a tiny fraction of the constituency's population will determine the candidate. In many electoral districts, winning the nomination of the traditional winning party is tantamount to winning the election. In the rare cases where Aboriginals have won nominations for such parties, that has been the case even in those districts that do not contain an Aboriginal majority population.

Furthermore, in Canada's multi-party and "first past the post" system, a solid bloc of even 10 percent of the voters in any one constituency is often sufficient to determine the outcome. For proof, one need only examine the results of "francophone-influenced" districts in Ontario which consistently return members of one party because of the near-bloc voting of that minority group.

More often than not, members of Parliament are elected with less than 50 percent of the votes cast and many times with as little as 40 percent.

If given a fair and reasonable opportunity within the existing system of electoral district design to contribute to the political agenda and influence the outcome of an election, Aboriginal people will have a greater incentive to participate in the political process. Assuming that this increased activity occurs and that Aboriginal people choose to vote

to a sufficient degree as a bloc, the outcome will likely be the election of more Aboriginal representatives to the House of Commons. In this way, the political success of Aboriginal people will be measured not only by their number of elected representatives, but by their status as full and equal participants in the political process.

### **APPENDIX**

The methodology for determining reliable estimates for the Aboriginal population of Canada for the year 1986 employed data from the 1986 census, figures produced by the Department of the Secretary of State and the June 1987 "Schedule of Indian Bands, Reserves, and Settlements" produced by the Department of Indian and Northern Affairs. The methodological approach for determining the location of Aboriginals followed a sequence of three steps:

### Step 1

Figures produced by the Department of the Secretary of State estimate that for 1986 there were 756 440 persons of Aboriginal origin in Canada, including Registered North American Indians, Métis, Inuit, and Non-Registered North American Indians of "multiple origin." The figures for Registered Indians, however, were considerably lower than the figures contained in the Register kept by the Department of Indian and Northern Affairs (307 960 from the Secretary of State as compared to 403 402 from Indian and Northern Affairs). Therefore, Indian and Northern Affairs figures for Registered Indians were used in place of the Secretary of State's figures. This provided a 1986 total for Canada of 851 517 Aboriginals (811 821 excluding the territories).

## Step 2

Estimates from the 1986 census, based on the 20 percent sample form, place the total Aboriginal population, those of both "single origin" and "multiple origin," at 711 720, again less than other estimates. However, there existed unenumerated reserves in the 1986 census, estimated by Statistics Canada to total 44 733. Population figures for the reserves compiled from the June 1987 "Schedule of Indian Bands, Reserves, and Settlements" were added to the data. Since a reserve constitutes in almost all cases a census subdivision, where there were no figures from the 1986 census, or where the figures from the census were lower than those from the "Schedule of Indian Bands, Reserves, and Settlements," the latter figures were substituted. This substitution resulted in the addition of 93 833 to the census estimates, and these additions were placed in a census subdivision according to name and map location of the reserve. The addition of the census figures and those unaccounted for from the "Schedule of Indian Bands, Reserves, and Settlements" still left a difference from the step 1 estimates in the amount of 42 228.

### Step 3

The difference between the updated additions from step 2 and the higher estimates from step 1 was apportioned on the assumption that the figures adjusted according to the "Schedule of Indian Bands, Reserves, and Settlements" were accurate and would not change. For the remaining census divisions and subdivisions, each geographic area's Aboriginal population as a proportion of the province's total Aboriginal population (excluding the figures from the Band membership lists) was used as the basis for apportioning the difference. In most instances, the amount of the apportioned difference constituted less than 10 percent of the total.

Table 7.A1 provides the figures for the total estimate from step 1, those added in step 2, and the difference apportioned in step 3.

Table 7.A1

Aboriginal population estimates

Province/ region	Total estimated step 1	Those added step 2	Census and those added step 2	Difference apportioned in step 3
Atlantic	39 935	2 334	36 784	3 151
Quebec	95 035	10 630	91 570	3 465
Ontario	211 905	27 192	194 567	17 338
Manitoba	104 784	14 064	99 299	5 485
Saskatchewan	97 797	11 251	88 896	8 901
Alberta	120 243	15 374	119 309	934
British Columbia	142 122	12 538	139 168	2 954
Total (excluding the territories)	811 821	93 383	769 593	42 228

Note: The author gratefully acknowledges the assistance of D. Keith Heintzman, Research Analyst with the Royal Commission on Electoral Reform and Party Financing, in compiling the data.

### ABBREVIATIONS

am. amendedc. chapter

Pub. L. Public Law (U.S.)

R.S.C. Revised Statutes of Canada

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